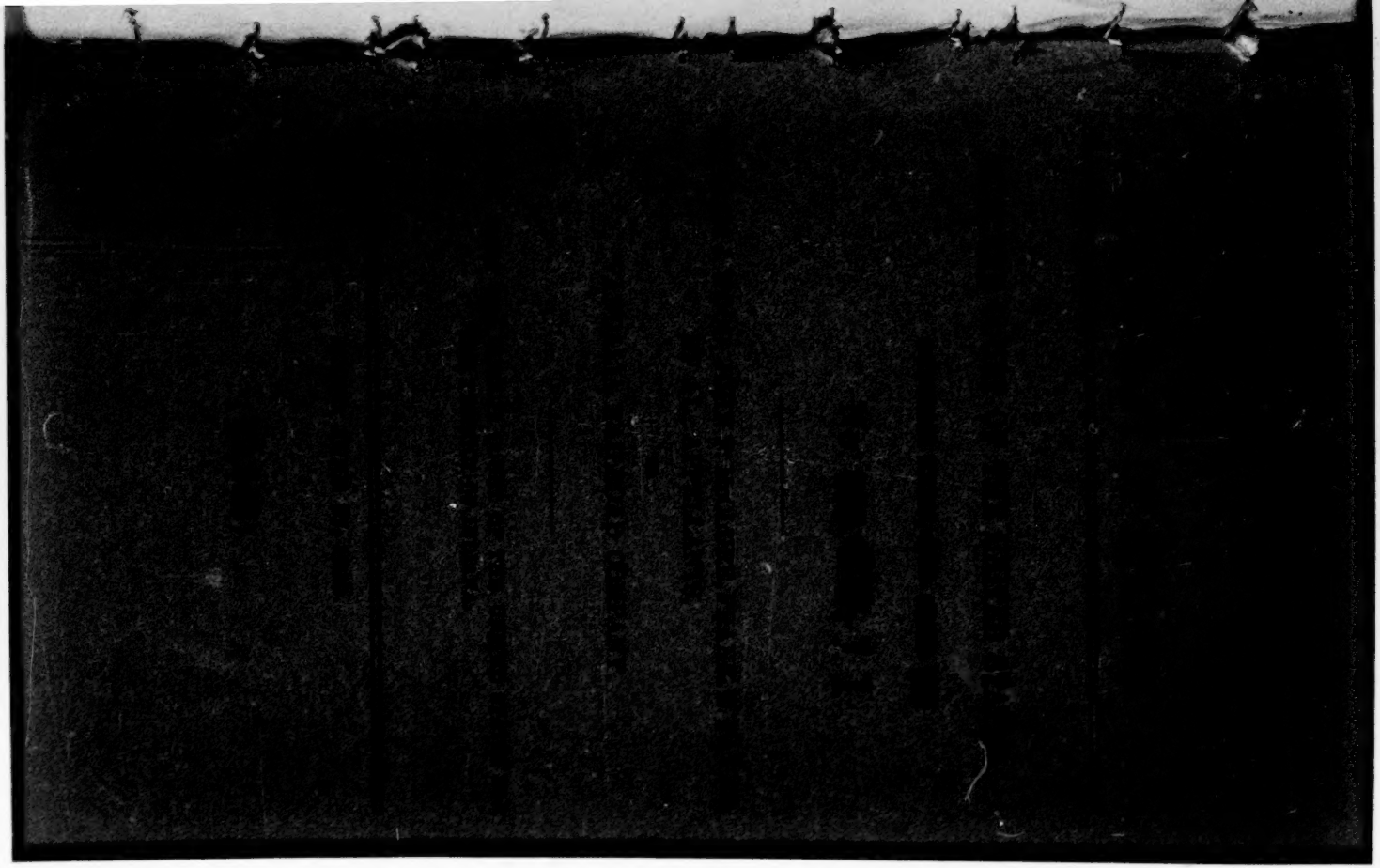

(22,242)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 335.

WILLIAM J. WOOD, JOHN F. McCLURE, FRANK E. PAYNE, ET AL., APPELLANTS,

vs.

VANDALIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 Chancery.

UNITED STATES OF AMERICA:

To Vandalia Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., thirty days after the date hereof, pursuant to an appeal which has been allowed by the Circuit Court of the United States for the District of Indiana, from its final decree in a suit wherein William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin and George G. Griffin are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana, and ex-officio Judge of said Circuit Court, this 20th day of May in the year of our Lord, one thousand nine hundred and ten.

ALBERT B. ANDERSON, *Judge.*

Service acknowledged this 8th day of June 1910,

VANDALIA RAILROAD COMPANY,
By JNO. G. WILLIAMS, *Gen'l Counsel.*

2 Pleas of the Circuit Court of the United States for the District of Indiana, Begun and Holden at the United States Court House in the City of Indianapolis, in said District, on the First Tuesday in May, in the Year of Our Lord One Thousand Nine Hundred and Nine, Before the Honorable Albert B. Anderson, Judge of the District Court of the United States for the District of Indiana, and ex-Official Judge of said Circuit Court.

No. 10663. Chancery.

VANDALIA RAILROAD COMPANY
vs.
UNION B. HUNT, WILLIAM J. WOOD, CHARLES V. MCADAMS, JAMES Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin, George G. Griffin.

Be it remembered, that heretofore, to-wit, at the November Term of said Court, on the 22nd day of January, 1907, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the Complainant by John G. Williams, S. O. Pickens and D. P. Williams, its solicitors, and files its bill of complaint herein, in the words following, to-wit:

To the Judges of the Circuit Court of the United States for the District of Indiana:

Vandalia Railroad Company, a consolidated corporation under the laws of the States of Indiana and Illinois and a citizen of the State of Indiana, with its principal office and place of business at the City of Terre Haute, in said State of Indiana, brings this its bill against Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, of the City of Indianapolis,
3 in the State of Indiana, and each a citizen and resident of the State of Indiana. And thereupon your orator complains and says:

For more than two years last past your orator has been, and is now the owner, in possession of and operating a line of railroad extending from the City of Indianapolis, Marion County, Indiana through the counties of Marion, Hendricks, Putnam, Clay and Vigo in the State of Indiana, and the Cities of Greencastle, Brazil and Terra Haute in the State of Indiana to the line dividing the States of Indiana and Illinois.

Defendants Union B. Hunt, William J. Wood, Charles V. McAdams are now, and for nearly two years last past have been, members of the Railroad Commission of Indiana, duly appointed by the Governor of the State of Indiana, and duly qualified and acting as such members of said Railroad Commission of Indiana.

Defendant James Bingham is the duly elected, qualified and acting Attorney General of the State of Indiana, and defendant Elliott R. Hooton is the duly elected, qualified and acting Prosecuting Attorney in and for the County of Marion, State of Indiana.

Defendants Gustav A. Schnull, William J. Griffin and George G. Griffin are the parties, who under the firm name of Schnull & Company, instituted the proceedings hereinafter mentioned before the Railroad Commission of Indiana, seeking a reduction in the rates charged by your orator for handling classified freight.

On the 14th day of December, 1906 your orator was, and for more then two years prior to that date had been, engaged as a common carrier in the business, among other things, of transporting freight
4 between said City of Indianapolis and the line dividing the states of Indiana and Illinois, and for the purpose of establishing its rates of charges for transporting and handling such freight your orator had divided the same into six classes, numbered respectively first, second, third, fourth, fifth and sixth, and had fixed and was charging for the handling and transportation of such freight the following charges:

Between Indianapolis and the Following Stations.

Rates in Cents per Hundred Pounds.

	Classes.					
	1	2	3	4	5	6
Ben Davis	10	9	8	7	5	4
Bridgeport	12	11	10	8	6	5
Gibson	15	13	11	9	6.5	5.5
Clayton	18	15	12	10	7	6
Coatsville	20	18	14.5	11	8	7
Limedale	22	20	17	12	9	8
Brazil	24.5	22	19.5	12.5	9	8
Nelson	25	22	19.5	12.5	9.5	8

In August, 1905 the defendants, Gustav A. Schnull, William J. Griffin and George G. Griffin under the name and style of Schnull & Company, instituted proceedings before the Railroad Commission of Indiana to procure a reduction of the rates established by your orator as hereinbefore set forth, claiming that said rates were in excess of what would be a reasonable compensation to your orator for the services rendered by it in handling and carrying the classified freight to which said rates were applicable, and thereupon, under date of December 14, 1906, the Railroad Commission of Indiana made and entered the following order:

"STATE OF INDIANA:

Railroad Commission of Indiana.

No. 6.

SCHNULL & COMPANY
vs.
VANDALIA RAILROAD COMPANY.

"The Commission after being fully advised in the premises, now finds that the rates complained of in the petition and now in force on the respondent's railroad, are unreasonable and unjust in that they are excessive, and that to the extent that they are excessive they are charged and collected in violation of law, and the respondent so failing to have just and reasonable rates in force on such railway, the Commission does now further find from the evidence that just and reasonable rates for the transportation of classified freight over that part of the respondent's line west from Indianapolis, Indiana, to the Indiana-Illinois State line should not exceed the rates specified in the following order of the Commission:

"It is therefore, ordered by the Commission that the respondent, the Vandalia Railroad Company, after February 1, 1907, shall not

charge or collect, for the transportation of traffic moving over its lines to all points from Indianapolis to the Indiana-Illinois State line, as now classified by it, under the Official Classification, rates in excess of the following schedule:

6

Rates in Cents per 100 Pounds.

From Indianapolis to Stations named.	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Ben Davis	6	8	7	6.5	5	3.5	2.5
Bridgeport	9	8.5	7.5	7	5	4	3
Oakplain	11	8.5	7.5	7	5	4	3
Plainfield	14	9	8	7	5.5	4	3
Gibson	15	9	8	7	5.5	4	3
Cartersburg ...	17	9.5	8.5	7.5	5.5	4.5	3
Clayton	20	9.5	8.5	7.5	5.5	4.5	3
Pecksburg	23	10.5	9.5	8.5	6.5	4.5	3.5
Amo	25	10.5	9.5	8.5	6.5	4.5	3.5
Coatsville	28	11	10	9	6.5	5	3.5
Fillmore	33	11.5	10.5	9	7	5	4
Alemeda	36	12	11	9.5	7	5.5	4
Greencastle ...	39	12	11	9.5	7	5.5	4
Limedale	40	12	11	9.5	7	5.5	4
Hamrick	44	13	12	10.5	8	6	4.5
Reelsville	47	13.5	12	11	8	6	4.5
Eagles	50	13.5	12	11	8	6	4.5
Harmony	54	14	12.5	11	8.5	6.5	4.5
Knightsville ..	55	14	12.5	11	8.5	6.5	4.5
Brazil	57	14.5	13	11.5	8.5	6.5	5
Turner	59	14.5	13	11.5	8.5	6.5	5
Staunton	61	14.5	13	11.5	8.5	6.5	5
Cloverland	62	15.5	14	12.5	9.5	7	5
Seeleyville	65	15.5	14	12.5	9.5	7	5
Prairie	71	16	14.5	13	9.5	7	5.5

7

Terre Haute ..	73	16.5	15	13	10	7.5	5.5
Macksville	75	16.5	15	13	10	7.5	5.5
Liggett	77	17	15.5	13.5	10	7.5	5.5
Nelson	79	17	15.5	13.5	10	7.5	5.5

"A duly certified copy of this order is directed to be served upon W. C. Downing, Superintendent of the respondent, by delivery.

"STATE OF INDIANA:

I, Chas. B. Riley, Secretary of the Railroad Commission of Indiana, hereby certify that the above and foregoing is a full, true and complete copy of the schedule of rates adopted by said Commission, on December 14th, 1906, in the foregoing entitled proceeding.

In witness whereof, I have hereunto set my hand and affixed the

Seal of said Commission, at Indianapolis, Indiana, this 14th day of December, A. D. 1906.

[SEAL.] CHAS. B. RILEY,
Secretary."

Your orator says that the rates fixed by it as hereinbefore set forth were entirely reasonable and that in handling the
8 traffic covered thereby your orator received only sufficient compensation to cover the actual cost to it of handling and carrying such traffic, and that if your orator be required to comply with the order aforesaid of the Railroad Commission of Indiana and collect only the rates specified in said order, your orator will not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying the traffic covered by said order of the Railroad Commission of Indiana.

Your orator says that the defendants composing the firm of Schnull & Company are wholesale grocers in the City of Indianapolis, and in connection with their business make, and are desirous of making daily shipments of freight over the line of your orator's railroad between Indianapolis and the Illinois State line, and that all of such shipments will be affected by the order of the Railroad Commission of Indiana hereinbefore set forth.

Your orator is informed and believes, and so states the fact to be, that there are a number of other business establishments in the City of Indianapolis that will seek to avail themselves of the rates fixed by said order of the Railroad Commission of Indiana, and that a refusal on the part of your orator to comply with said order will involve it in a number of actions at law brought by said Schnull & Company and other shippers to recover the damages allowed by the statute of the State of Indiana providing for the organization of said Railroad Commission of the State of Indiana, and also to recover the penalty prescribed by that law and payable to the State of Indiana for a failure to comply with an order of said Commission establishing maximum rates.

And by reason of the premises your orator says that it will be subjected to a multiplicity of suits and be threatened with
9 the assessment of the numerous and large penalties prescribed by law for a failure to comply with an order of the Railroad Commission of Indiana, unless the defendants herein be enjoined from enforcing or claiming the right to enforce the rates established by the order of the Railroad Commission of Indiana hereinbefore set forth.

Your orator says that under Section One (1), Article Fourteen (14) of the Constitution of the United States it cannot be lawfully depriced of its property without due process of law, nor be denied the equal protection of the laws; and your orator says that if the rates fixed by the order of the Railroad Commission of Indiana hereinbefore set forth be enforced, it will be compelled to carry the traffic covered by that order at less than the actual cost of such carriage, and will as a result, be deprived of its property without due process of law.

And your orator says that unless the defendants herein, and each of them, and their successors in office and representatives in like condition be restrained and enjoined, your orator will be subjected to the numerous suits and to the assessment of the numerous penalties allowed and prescribed by an act of the General Assembly of the State of Indiana entitled, "An Act providing for the creation of a railroad commission, the appointment and compensation of the members thereof, prescribing the powers and duties of such commission and its members, prescribing certain duties and obligations of railroad companies, express companies and other common carriers, defining certain misdemeanors and prescribing penalties; providing for the collection of penalties by civil action from railroad companies and other common carriers by the State in cases therein provided for; appropriating money to carry out its provisions;
10 providing for a review of the decisions of the commission and conferring jurisdiction on certain courts to hear and determine such proceedings, and repealing all laws and parts of laws in conflict therewith. Approved February 28, 1905."

Your orator says that each and all of the acts and doings of the defendants herein, their successors in office and representatives in like condition in the way of enforcing and collecting the damages and penalties allowed and prescribed by the Act of the General Assembly of the State of Indiana hereinbefore mentioned will tend to the manifest wrong, irreparable injury and oppression of your orator.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the defendants herein may answer the premises, but not upon oath or affirmation,—answer upon oath or affirmation being hereby expressly waived, your orator prays:

1. That the order of the Railroad Commission of Indiana made and entered under date of December 14, 1906, and hereinbefore set forth, be declared void and of no force or effect.

2. That each and all of the defendants herein, their successors in office and their representatives in like condition be, pending this action, enjoined, restrained and prohibited from instituting or prosecuting any suit or suits against your orator for the recovery of any damages, overcharges, penalty or penalties under or by virtue of the said act of the General Assembly of the State of Indiana, or any of its provisions, or under and by virtue of the said order of the Railroad Commission of Indiana, made and entered under date of December 14, 1906, hereinbefore set forth.

11 3. That upon the final hearing of this cause it be decreed that said order of December 14, 1906, as hereinbefore set forth, be declared void and of no effect, and be cancelled; and that the defendants and each of them, and their successors in office and representatives in like condition be perpetually enjoined and restrained from instituting or prosecuting any suit or suits against your orator for the recovery of any damages, overcharges, penalty or penalties under or by virtue of the said act of the General Assembly of the State of Indiana, or any of its provisions, or under

and by virtue of the said order of December 14, 1906, as hereinbefore set forth, of the Railroad Commission of the State of Indiana.

4. And your orator prays for all such further or other relief as the nature of the case may require and to your Honors shall seem meet.

May it please your Honors to grant unto your orator a writ of subpœna to be directed to said Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be limited, to appear personally before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide such order, direction and decree as may be made against them, or either of them, in the premises.

VANDALIA RAILROAD COMPANY,
By JOSEPH WOOD, *President.*

JNO. G. WILLIAMS,
S. O. PICKENS,
D. P. WILLIAMS,
Solicitors for Complainant.

12 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, a Notary Public in and for said County and State, this 21st day of January, A. D. 1907, personally appeared Joseph Wood, who having first been duly sworn, upon his oath deposes and says: That he is President of Vandalia Railroad Company, complainant in the above entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true in substance and in fact.

JOSEPH WOOD.

Subscribed and sworn to before me the day and year last written above.

[SEAL.] S. H. CHURCH,
Notary Public.

My commission expires March 20, 1909.

13 And afterwards, to-wit, at the November Term of said Court on the 4th day of March, 1907, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the defendants by James Bingham, Esq., their solicitor, and file their answer herein, in the qords following, to-wit:

To the Judges of the Circuit Court of the United States for the District of Indiana:

Defendants Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin, and George G. Griffin, each for himself, for separate and several answer to the bill of complaint of complainant, Vandalia Railroad Company, says, that he admits that complainant is a corporation consolidated under the laws of the States of Indiana and Illinois, and a citizen of the state of Indiana, with its principal office and place of business at the city of Terre Haute, in the State of Indiana, and that for more than two years last past prior to the beginning of this action said complainant has been and still is the owner, in possession of and operating a line of railroad extending from the city of Indianapolis, Marion county, Indiana, through the counties of Marion, Hendricks, Putnam, Clay and Vigo, in the state of Indiana, and the cities of Greencastle, Brazil and Terre Haute in said State, to the line dividing the states of Indiana and Illinois;

That defendants Union B. Hunt, William J. Wood, and Charles V. McAdams were, at the beginning of this action, and for
14 nearly two years last past prior thereto, the duly appointed, qualified and acting members of the Railroad Commission of Indiana;

That defendant, James Bingham, is the duly elected, qualified and acting attorney general of the State of Indiana;

That defendant, Elliot R. Hooton, is the duly elected, qualified and acting prosecuting attorney in and for the county of Marion, in the state of Indiana;

That defendants, Gustav A. Schnull, William J. Griffin and George G. Griffin, are and were partners doing business under the firm name of Schnull and Company, and instituted the proceedings referred to in said bill of complaint before the Railroad Commission of Indiana, seeking a reduction in the rates of complainant Railroad Company for handling classified freight.

That on the 14th day of December, 1906, and for more than two years last past prior thereto complainant has been engaged as a common carrier in the business, among other things, of transporting freight between said city of Indianapolis and said state line.

That for the purpose of establishing its rates and charges for transporting and handling freight, complainant had divided same into six classes, numbered respectively first, second, third, fourth, fifth and sixth, and had fixed and was charging for handling and transporting freight, the following charges:

15 *Between Indianapolis and the Following Stations.*

Rates in Cents Per Hundred Pounds.

	Classes.					
	1	2	3	4	5	6
Ben Davis	10	9	8	7	5	4
Bridgeport	12	11	10	8	6	5
Gibson	15	13	11	9	6.5	5.5
Clayton	18	15	12	10	7	6
Coatsville	20	18	14.5	11	8	7
Limedale	22	20	17	12	9	8
Brazil	24.5	22	19.5	12.5	9	8
Nelson	25	22	19.5	12.5	9.5	8

That in August, 1905, said defendants, Schnull, Griffin and Griffin, under the name and style of Schnull and Company, instituted proceedings before the Railroad Commission of Indiana to secure a reduction of the rates established and charged by complainant as aforesaid, claiming therein that said rates were in excess of what would be a reasonable compensation to complainant for the services rendered in handling and carrying classified freight to which said rates were applicable, and that in said proceedings under the date of December 14, 1906, the Railroad Commission of Indiana made and entered the following order:

16 STATE OF INDIANA:

Railroad Commission of Indiana.

No. 6.

SCHNULL & COMPANY
v.
VANDALIA RAILROAD COMPANY.

"The Commission after being fully advised in the premises, now finds that the rates complained of in the petition and in force on the respondent's railroad, are unreasonable and unjust in that they are excessive, and that to the extent that they are excessive they are charged and collected in violation of law, and the respondent so failing to have just and reasonable rates in force on such railway, the Commission does now further find from the evidence that just and reasonable rates for the transportation of classified freight over that part of the respondent's line west from Indianapolis, Indiana, to the Indiana-Illinois state line should not exceed the rates specified in the following order of the Commission:

It is, therefore, ordered by the Commission that the respondent, the Vandalia Railroad Company, after February 1, 1907 shall not

charge or collect, for the transportation of traffic moving over its lines to all points from Indianapolis to the Indiana-Illinois State line, as now classified by it, under the Official classification, rates in excess of the following schedule:

From Indianapolis to stations named.

17 Rates in Cents Per 100 Pounds.

	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Ben Davis	6	8	7	6.5	5	3.5	2.5
Bridgeport	9	8.5	7.5	7	5	4	3
Oakplain	11	8.5	7.5	7	5	4	3
Plainfield	14	9	8	7	5.5	4	3
Gibson	15	9	8	7	5.5	4	3
Cartersburg	17	9.5	8.5	7.5	5.5	4.5	3
Clayton	20	9.5	8.5	7.5	5.5	4.5	3
Pecksburg	23	10.5	9.5	8.5	6.5	4.5	3.5
Amo	25	10.5	9.5	8.5	6.5	4.5	3.5
Coatsville	28	11	10	9	6.5	5	3.5
Fillmore	33	11.5	10.5	9	7	5	4
Alemeda	36	12	11	9.5	7	5.5	4
Greencastle	39	12	11	9.5	7	5.5	4
Limedale	40	12	11	9.5	7	5.5	4
Hamrick	44	13	12	10.5	8	6	4.5
Reelsville	47	13.5	12	11	8	6	4.5
Eagles	50	13.5	12	11	8	6	4.5
Harmony	54	14	12.5	11	8.5	6.5	4.5
Knightsville	55	14	12.5	11	8.5	6.5	4.5
Brazil	57	14.5	13	11.5	8.5	6.5	5
Truner	59	14.5	13	11.5	8.5	6.5	5
Staunton	61	14.5	13	11.5	8.5	6.5	5
Cloverland	62	15.5	14	12.5	9.5	7	5
Seeleyville	65	15.5	14	12.5	9.5	7	5
Prairie	71	16	14.5	13	9.5	7	5.5
18 Terre Haute	73	16.5	15	13	10	7.5	5.5
Macksville	75	16.5	15	13	10	7.5	5.5
Liggett	77	17	15.5	13.5	10	7.5	5.5
Nelson	79	17	15.5	13.5	10	7.5	5.5

A duly certified copy of this order is directed to be served upon W. C. Downing, Superintendent of the respondent, by delivery.

STATE OF INDIANA:

I, Chas. B. Riley, Secretary of the Railroad Commission of Indiana, hereby certify that the above and foregoing is a full, true and complete copy of the schedule of rates adopted by said Commission, on December 14th, 1906, in the foregoing entitled proceedings.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission, at Indianapolis, Indiana, this 14th day of December, A. D. 1906.

[SEAL.] CHAS. B. RILEY,
Secretary.

That said defendants composing said firm of Schnull and Company, were and are wholesale grocers of the city of Indianapolis, and were and are in connection with their said business desirous of making daily shipments of freight over complainant's line of railroad, from Indianapolis to said state line, and that all of such shipments will be affected by the order of the Railroad Commission of Indiana aforesaid.

And he denies that the rates fixed and charged by complainant as aforesaid, upon classified freight, were reasonable and that
19 in handling the traffic covered thereby complainant only received sufficient compensation to cover the actual cost of handling and carrying such traffic, and denies that if complainant be required to comply with the orders aforesaid of said Railroad Commission of Indiana, and collect only the rates specified in said order, that complainant will not obtain revenue sufficient to reimburse it for actual outlay in handling and carrying the traffic covered by said order of said Railroad Commission; and denies if the rates fixed by the order of said Railroad Commission aforesaid be enforced, that complainant will be compelled to carry the traffic covered by said order at less than the actual cost of such carriage, and will as a result be deprived of its property without due process of l

That as to the information and belief of complainant, and the facts with reference thereto, which complainant states are true, there are a number of other business establishments in the City of Indianapolis that will seek to avail themselves of the rates fixed by rail order of said Railroad Commission of Indiana, and that a refusal on the part of complainant to comply with said order will involve it in a number of actions at law, brought by said other shippers to recover damages, etc.

He says he is not advised, and neither affirms or denies same, and asks that strict proof thereof be made by the complainant.

He further says that in said proceedings before said Railroad Commission which established said rates found to be reasonable by it as aforesaid, said complainant participated, and that said act and said law under which said proceedings were instituted referred to in said bill of complaint, makes provision for an appeal from
20 said order to the appellate court of the state of Indiana, and the filing of bond which will amply and fully protect said complainant from all or any threatened suits or prosecutions referred to in complainant's bill of complaint, and thereby relieve and protect said complainant from all liability of every kind and character on account of suits or otherwise.

That as to all other matters alleged in said bill of complaint and

not specifically affirmed or denied in this answer he requires strict proof of complainant.

Said defendants, each for himself, further answering denies that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the said bill of complaint, and prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

UNION B. HUNT.
CHARLES V. McADAMS.
WILLIAM J. WOOD.
JAMES BINGHAM.
GUSTAV A. SCHNULL.
WILLIAM J. GRIFFIN.
GEORGE G. GRIFFIN.

JAMES BINGHAM,
Attorney General and Solicitor for Defendants.

21 And afterwards, to wit, at the November Term of said Court, on the 3rd day of May, 1907, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Come the parties by their solicitors and by leave of court now granted complainant amends its bill by inserting after the words "to the manifest wrong, irreparable injury and oppression of your orator" appearing at the close of the second paragraph on page seven of said bill of complaint the following:

"And your orator avers that the loss which it would sustain in handling the traffic aforesaid at the rates named in the order of said Commission would be greatly in excess of two thousand dollars ($2,000.00), exclusive of interest and costs, and that the damages and penalties to which it would be subjected for failure to comply with said order would also be greatly in excess of the sum of two thousand dollars ($2,000.00), exclusive of interest and costs."

VANDALIA RAILROAD COMPANY,
By S. O. PICKENS,
JNO. G. WILLIAMS,
Its Solicitors.

And complainant's motion for a temporary injunction now coming on to be heard and the Court being fully advised, it is ordered that said motion be overruled and a temporary injunction denied.

And afterwards, to-wit, at the November Term of said Court, on the 4th day of May, 1907, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by John G. Williams, S. O. Pickens and D. P. Williams, its solicitors, and files its replication herein in the words following, to-wit:

The Replication of the Vandalia Railroad Company, Plaintiff, to the Answer of Defendant.

This repliant, saving and reserving unto itself all, and all
22 manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says, that it will aver and prove its said bill to be true, certain and sufficient in the laws to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that, any other matter or thing whasoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this Honorable court shall direct, and humbly prays, as in and by its said bill it hath already prayed.

VANDALIA RAILROAD COMPANY,
By S. O. PICKENS,
JNO. G. WILLIAMS,
Its Solicitors.

And afterwards, to-wit, at the May Term of said Court, on the 8th day of October, 1907, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

It appearing to the Court that the standing Master in Chancery is disqualified and declines to act in such capacity in the above entitled cause on account of his connection with parties interested in the result of the suit as their solicitor, it is ordered that the order of reference to him be and the same is hereby vacated and set aside.

And the complainant comes now by John G. Williams, its solicitor, and moves the court for another order of reference, and it is thereupon ordered that the above entitled cause be and the same is hereby referred to Noble C. Butler who is now for special reasons appointed a special master in chancery herein and he is hereby directed to take the testimony concerning the matters in controversy, and report the same to the court with his finding of facts and conclusions of law with all convenient speed.

23 And afterwards, to-wit, at the November Term of said Court, on the 6th day of March, 1909, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled case were had, to-wit:

Comes now Noble C. Butler, Esq., Special Master herein and files his report and evidence in the above entitled cause, which report is in the words following, to-wit:

Report of Special Master in Chancery.

To the Honorable the Judges of said Court:

I, the undersigned Special Master in Chancery, to whom the above entitled cause has been referred, herewith report the testimony and exhibits and other evidence taken by me under the order of reference, and my finding of facts and conclusions of law as required by said order.

In the discharge of my duty as Special Master I was attended by the solicitors for the parties as reported in the accompanying volume of evidence.

The bill of complaint in this case charges that the Railroad Commission of Indiana on December 14, 1906, made and entered an order which in substance and effect prohibits the complainant from charging or collecting rates for the transportation of classified freight from and between Indianapolis and the Illinois state line, and all intermediate points upon its road in excess of the rates that are designated in the order. The language of the order is "the transpor-ation of traffic," and all points from Indianapolis to the Indiana-Illinois State Line," but the construction which I have given it is apparently accepted by all the parties, and the case has
24 been heard upon that construction of the order.

It is further charged in the bill that if the order of the Railroad Commission be enforced the complainant "will not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying the traffic covered by said order," and that an enforcement of said order will therefore deprive the complainant of its property without due process of law; wherefore the complainant prays that said order may be declared void and cancelled, and that the defendants and each of them, and their successors in office may be perpetually enjoined from any proceedings under it.

An answer and a replication have been filed, and the sole question presented for consideration by the pleadings is whether an enforced adoption of the rates prescribed by the order of the Railroad Commission would have the result alleged by the complainant.

The Supreme Court has indicated the rules and principles which should be observed in determining this question. It held in Railroad Co. v. Minnesota, 186 U. S. 257, 264 that "the presumption is that the rates fixed by the commission are reasonable and the burden of proof is upon the railroad company to show the contrary;" and in Railway Company v. Tompkins, 176 U. S. 167, 173 that "the case must be a clear one in behalf of the railroad company or the legislation of the State must be upheld."

In Smyth v. Ames, 169 U. S. 466, 541 it expressed itself as follows:

"In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the trans-
25 portation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State

cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business."

The proofs which have been taken by me relate to the traffic over the road of the complainant between Indianapolis and the Illinois state line during the years 1904, 1905 and 1906. It has been possible to ascertain with sufficient certainty from the way bills of the complainant the gross earnings upon the transportation of classified freight during those years between points within the State, and I find and report that they were as follows:

1904	$79,803.80
1905	91,067.56
1906	102,241.15

26 These earnings were upon rates fixed by the complainant during a period immediately preceding the proposed reduction of them by the order of the Railroad Commission which became effective on February 1, 1907.

Schedules of rates as fixed by the complainant and by the Railroad Commission being fully set forth in the bills of complaint are not reproduced here.

It is more difficult to ascertain the expenses that were incident to these earnings, and it is impossible to ascertain them exactly. Many expenses of freight and passenger traffic are blended in such a way as to preclude an accurate separation of them. The customary method of ascertaining the amount of expenses that is chargeable against different kinds of traffic is a process of separation or apportionment, or both separation and apportionment. All expenses that are distributable are distributed, and all expenses that are undistributable are apportioned. Undistributable expenses of freight and passenger traffic are apportioned between them according to the mileage of trains. But such an apportionment of expenses between different kinds of freight, or between interstate and domestic, or interstate freight which is transported in the same cars to and from different points in and out of the State, is plainly impracticable.

In the present case the complainant has adopted, as the only practicable method of ascertaining the expenses incident to the transportation of classified freight between points upon its road within the State, an apportionment of them upon the ratio of all operating ex-

penses to the whole earnings from every source upon the road between Indianapolis and the Illinois state line during the year
27 1904, and upon the St. Louis Division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expenses being as follows:

1904	72.64
1905	.73.03
1906	72.64

It does not appear from the evidence that any unusual or improper items of expense were included in the computation of the ratio of operating expenses to the earnings, and the maintenance of practically the same ratio during the whole of the period under consideration denotes regularity.

According to this method, which has the approval of the Supreme Court, in Smyth v. Ames, supra, and Railway Co. v. Tompkins, supra, the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission between points within the State would have been as follows:

1904	$59,453.83
1905	66,506.64
1906	74,267.97

The gross earnings during that period under the schedule of rates prescribed by the Railroad Commission, making a reduction of 34% and 34.5% in the actual amount of them, would have been as follows:

1904	$52,222.12
1905	60,079.13
1906	66,936.99

There would have been accordingly a deficit or loss to the complainant upon the transportation of such freight during
28 these years as follows:

1904	$7,231.71
1905	6,427.51
1906	7,330.98

The cost of handling freight over the platform at the Indianapolis terminal was estimated according to the tonnage in 1905, by a witness for the complainant, at 70.4 cents per ton, which is in substantial accord with other evidence.

There has not been any evidence introduced by the defendants which impeaches the general accuracy of these figures. They have been sharply questioned and criticized, but they cannot be rejected. If there be any difference in the ratio of operating expenses to earn-

ings in the transportation of domestic or local freight and interstate or through freight, it sufficiently appears from the testimony that the expense in the case of domestic or local freight is greater than in the case of interstate or through freight. In the absence of such testimony "it is obvious on a little reflection," as was said by the Supreme Court in Railway Co. v. Tompkins, supra, that "the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy."

Other methods of ascertaining the cost of transportation according to the tonnage and by comparison with other roads have been suggested, but they require more facts than are disclosed by the evidence, and upon the facts as disclosed by the evidence I find and report that the method adopted by the complainant is the only practicable one in the present case.

29 For the foregoing reasons I also find and report as a fact that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses; and I further find and report as a conclusion of law that the enforcement of the order of the Railroad Commission would deprive the complainant of its property without due process of law within the meaning of the Constitution of the United States and in violation of its provisions.

Respectfully submitted.

NOBLE C. BUTLER,
Special Master in Chancery.

30 And afterwards, to-wit, at the November Term of said Court, on the 5th day of April, 1909, before the Honorable Albert C. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the defendants by Bernard Korbly, Willard New and James Bingham, their solicitors, and file their exceptions to the report of the special master herein, in the words following, towit:

Defendants' Exceptions to the Special Master's Report.

The defendants and each of them except to the report of Noble C. Butler, Special Master in chancery, heretofore filed in this cause, in the following particulars:

As to Finding of Facts.

1. That said report is not a full and complete finding of all the facts necessary to be found in order to properly determine the case and issues.

2. That said report is erroneous in that the conclusion of fact is not sustained by sufficient evidence.

3. That said report is erroneous in that the conclusion of fact is not sustained by the evidence.

4. That said report is erroneous in that the Special Master, in determining the question of the reasonableness or unreasonableness of the rates as fixed by the Railroad Commission of Indiana, took into consideration the interstate business of complainant company, including the profits and losses sustained on said business, done on its line of road in the state of Indiana and in the state of Illinois, when in truth and in law said Special Master should have determined the reasonableness or unreasonableness of said Railroad Commission's rates without reference to said interstate business done by complainant but with reference only to the transportation of property wholly within the limits of the state of Indiana on its
31 line of road from Indianapolis to the Illinois state line and intermediate points.

5. The said report is erroneous in that the Special Master found the expense of the transportation of classified freight over complaint's road between Indianapolis and the Illinois state line during each of the years 1904, 1905 and 1906 respectively without any evidence whatever as to the fair value of the property used in the transportation of said classified freight.

6. The said report is erroneous in finding that the expense of transporting classified freight over complainant's road between Indianapolis and the Illinois state line for each of the years 1904, 1905 and 1906, respectively, to be as follows: For the year 1904, $59,453.83; for the year 1905, $66,506.64 and for the year 1906, $72,267.97.

7. Said report is erroneous in that the Special Master found as follows: "The proofs which have been taken by me relate to the traffic over the road of the complainant between Indianapolis and the Illinois state line during the years 1904, 1905 and 1906." The records shows that other traffic, to-wit: passenger, freight, express and mail traffic from and between Indianapolis and East St. Louis, Illinois, whether it originated on or off complainant's said line of road, was proven and said report shows that the gross income from and the gross expense of said other traffic were erroneously considered by said Special Master in determining the reasonableness or unreasonableness of the class rates adopted by said order of the Railroad Commission of Indiana.

8. The said report, although the presumption is that the said rates fixed by the Railroad Commission of Indiana are
32 reasonable and the burden of proof is upon complainant to prove the contrary, failed to state that complainant made no attempt or effort whatever to prove the expense of producing the said revenue for each of the years ending December 31, 1904, 1905 and 1906, respectively, from classified freight which originated on the line of complainant's roads between Indianapolis and the Illinois state line, including both points, and which ended on that same line.

9. That said report failed to state that complainant made no effort or attempt to ascertain the expense of transporting the said classified freight mentioned above by charging directly to said traffic all expenses that could be legitimately chargeable to said traffic, and also charging to it its proper proportion of the undistributable expense.

10. The said report is erroneous in that the said Special Master found that the class rates ordered by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses, when complainant failed to prove or attempt to prove the cost of transporting said classified freight from which said earnings *was* produced.

11. That said report is erroneous in that the Special Master adopted as the only practical method of ascertaining the expenses incident to the transportation of said classified freight which originated on the line between Indianapolis and the Illinois state line, both points included, and which ended on that same line for the years ending December 31, 1904, 1905 and 1906, respectively, "an apportionment of them upon the ratio of all operating expenses to the whole earnings from every source upon the road between
33 Indianapolis and the Illinois state line during the year 1904, and upon the St. Louis Division, which extends from Indianapolis *and* the Illinois state line during the year 1904, and upon the St. Louis Division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expense being as follows: 1904, 72.64 per cent; 1905, 73.03 per cent and 1906, 72.64 per cent," because it takes into consideration complainant's interstate business, with its losses and profits, and because its use leads to impossible, unjust and erroneous conclusions, all of which is unfair to defendants, as will hereafter more fully appear.

12. Said report is erroneous for the reason that if the failure to prove either accurately or approximately the expense of handling the traffic in question was to have any influence on said report of the Special Master, it should adversely affect the complainant and not the defendant, as it was the duty of the complainant to apportion the cost of handling traffic in question, and it failed to either apportion the exact cost or submit facts from which the cost could reasonably be estimated.

13. The said report is erroneous in that it fails to show that complainant did not prove its allegation made in its bill of complaint that it could not obtain revenue sufficient to reimburse it for its outlay in handling and carrying said classified traffic on the rates fixed by the Railroad Commission of Indiana. In fact, the report shows that none of the witnesses of complainant could tell the cost of handling and carrying the said classified traffic or even tell what it would cost approximately, and the evidence further shows that no attempt or effort was made by the complainant or any of its officers or employees to ascertain and fix either accurately or
34 approximately the cost of handling and carrying the classified traffic within the state of Indiana which the Master reported produced in the year 1904, $79,803.80, in the year 1905, $91,067.56 and in the year 1906, $102,241.15.

14. The said report is erroneous in that the Special Master ascertained the expense of producing the revenue from the classified freight for each of the years 1904, 1905 and 1906, respectively, which originated and ended on the line of complainant's road between Indianapolis and the Illinois state line, both points included,

by assuming that the ratio of expense for producing said revenue was the same ratio of expense for producing revenue on complainant's entire business on its line of road from Indianapolis, Indiana, to East St. Louis, Illinois, which said business included passenger, freight, mail and express, done within the state of Illinois as well as the State of Indiana, and includes traffic destined to and coming from other states than the state of Indiana.

15. Said report is erroneous in that the Special Master, in determining the question of the reasonableness or unreasonableness of the rates ordered by the Railroad Commission of Indiana, applied the ratio of expense to earnings on complainant's entire business done within the state of Illinois as well as the state of Indiana to the purely local or domestic classified freight business done within the state of Indiana, assuming that method was approved in the case of Smyth v. Ames, 169 U. S. 466, 451; 18 Sup. Ct. Rep. 418, when, in truth and in fact, the method approved of in said case was the percentage of expense to earnings on all business, through and local, done by the railroad company within the state of Nebraska.

16. Said report is erroneous because the method of com-
35 putation adopted by said Special Master is fallacious, and by its method classified rates five times higher than those now in use by complainant company, if reduced thirty-four per cent, could be shown to produce less revenue than the cost of transportation or operating expenses, (estimated by the said fallacious method) and therefore confiscatory in character.

17. The said report is erroneous in that the Special Master failed to state in connection with said method of computation adopted by him to show the classified rates ordered by the Railroad Commission of Indiana would not produce sufficient revenue to pay the expenses of transportation, that in the year 1905 the total earnings on all business on the St. Louis Divison of complainant's road, extending from Indianapolis to East St. Louis, in the state of Illinois, were $4,750,811.13 and that the total operating expenses were $3,469,-544.81, (Record p. 21) and that therefore the per centage of expense to earnings on all business for 1905 was 73.03 per cent; that the revenue for the year ending December 31, 1905, from all classified freight originating and ending on complainant's road between Indianapolis and the Illinois state line, including both points, based on complainant's classified rates was $91,067.56; (Record p. 27) that if complainant's classified rates had been five times higher than the class rates fixed by complainant, the revenue on the classified tonnage originating and ending on complainant's line between Indianapolis and the Illinois state line for the year ending December 31, 1905, would have been $455,337.80 instead of $91,067.56, and the total gross earnings of complainant's entire road from Indianapolis to East St. Louis would have been $5,115,081.37 instead of $4,750,-
811.13; that if the total earnings had been $5,115,081.37
36 and the total expenses had been $3,469,544.81, the ratio or percentage of expenses to earnings on complainant's entire business in 1905 would have been 67.8 per cent instead of 73.03 per cent; that if the Railroad Commission of Indiana had caused a

reduction of 34 per cent of said supposed rates (which are five times higher than complainant's present class rates) the revenue in 1905 to complainant from its said classified freight would have been $300,522.95, or a reduction of $154,814.85; that if the percentage of expense to earnings on complainant's entire business, including rates five times higher than complainant's present rates, 67.8 per cent, (adopting the said Special Master's method of computation) it cost $308,719.02 to earn $455,337.80, and that the difference between said $308,719.02 and said $300,522.94, the revenue that would have been produced under a thirty-four per cent. reduction of said supposed rates, would show a loss to complainant of $8,196.98 for the year ending December 31, 1905. And defendants say that a method of computation that will lead to such absurd results and erroneous conclusions is unfair to defendants, and impracticable to reach a just and accurate conclusion, and should not have been used by the Special Master.

18. Said report is erroneous in that it computes the expense of producing the revenue of $79,803.80 for the year ending December 31, 1904, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points inclusive, by the percentage of expense to earnings on complainant's entire business for the year 1904, which is stated in said report to be 72.64 per cent, and by assuming that said percentage of 72.64 per cent is the ratio of expense to earnings on complainant's said classified freight business for the year 1904.

37 19. Said report is erroneous in that it computes the expense of producing the revenue of $91,067.56 for the year ending December 31, 1905, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points inclusive, by the percentage of expense to earnings on complainant's entire business for the year 1905 on its line of road from Indianapolis to East St. Louis, Illinois, which said percentage is stated in said report to be 73.03 per cent, and by assuming that said percentage is the ratio of expense to earnings on complainant's said classified freight business for the year 1905.

20. Said report is erroneous in that it computes the expense of producing the revenue of $102,241.15 for the year ending December 31, 1906, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points inclusive, by the percentage of expense to earnings on complainant's entire business for the year 1904 on its line of road from Indianapolis to East St. Louis, Illinois, which said percentage is stated in said report to be 72.64 per cent, and by assuming that said percentage is the ratio of expense to earnings on complainant's said classified freight business for the year 1905.

21. That said report is erroneous in finding that "the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission between points within the state would have been as follows: 1904, $59,453.85; 1905, $66,504.64; 1906, $72,267.97."

22. That said report is erroneous in finding that it cost $59,453.83

to produce $79,803.80, the amount of revenue derived by
38 complainant in the year ending December 31, 1904, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points inclusive; that it cost $66,506.64 to produce $91,067.56, the amount of revenue derived by complainant in the year ending December 31, 1905, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points included; and that said report is erroneous in finding that it cost $72,267.97 to produce $102,241.15, the amount of revenue derived by complainant in the year ending December 31, 1906, from classified freight originating and ending on complainant's line from Indianapolis to the Illinois state line, both points included.

23. That said report is erroneous in finding that to produce $52,222.12, what the gross earnings would have been for the year ending December 31, 1904, under the schedule of rates prescribed by the Railroad Commission, the expense would have been $59,453.83, or a deficit or loss to complainant of $7,231.71; that to produce $60,079.13, what the gross earnings would have been for the year ending December 31, 1905, under the schedule of rates prescribed by the Railroad Commission, the expense would have been $66,506.64, or a deficit or loss to complainant of $6,427.51; that to produce $66,936.99, what the gross earnings would have been for the year ending December 31, 1906, under the schedule of rates prescribed by the Railroad Commission, the expense would have been $72,267.97, or a deficit or loss to complainant of $7,330.98.

24. Said report is erroneous in finding that "the cost of handling freight over the platform at the Indianapolis terminal was estimated according to the tonnage in 1905 by a witness for the com-
39 plainant at 70.4 cents per ton which is in substantial accord with other evidence." The Special Master ignored the testimony of Mr. Graham, the local freight agent of complainant who testified that there were 11,524 freight cars in and out of the Indianapolis freight station in the year 1905 (Record pp. 180, 178, 179, 186) instead of 12,852, the number given by Mr. Saur (Record p. 118) and upon whose testimony and figures the estimate of 70.4 cents per ton was given as the cost of handling freight over the platform (Record p. 116 to 127). And the Special Master further overlooked the fact that Mr. Saur charged in his estimate the entire office force expense at Indianapolis to the handling of platform freight, (Record p. 119) when according to Mr. Graham's testimony eighty per cent. of the services of the office force at the Indianapolis freight station is used for the through freight business and only twenty per cent. of the services is used for platform freight (Record p. 195). And the Special Master ignored the following testimony of Mr. Saur on pp. 136 and 137 of the Record:

Q. "Yes, and those same clerks devote their time and are paid for the purpose of looking after the 145,988 cars, or a good portion of those cars, are they not?"

A. "I do not so understand it."

Q. "Don't you understand that there are a great many cars loaded

in and out of the freight depot down there that are not loaded by the platform workers, but are loaded directly by the shippers?"

A. "There are cars, yes."

Q. "Do you know how many such cars there were in 1905?

A. "No sir."

Q. "Did you ascertain or attempt to ascertain in your figures here, how many cars there were?"

40 A. "No sir."

Q. "What percentage of the cars that came in and went out of that depot were loaded by the consignor directly without the intervention of the platform helpers?"

A. "I don't know."

Q. "Do you know what percentage of cars are loaded outside of the depot which are looked after by the clerks in the office?"

A. "No sir."

Q. "Did you take account of that?"

A. "No sir."

Q. "Well, now, suppose that there are 50 cars loaded on the outside each day, on the sidetracks, along the sidetracks, south of the present depot, and suppose those cars are looked after by the clerks employed and paid at the freight depot, and most of their time is devoted to the looking after the loading and the handling of those cars, and a very small percentage of their time is devoted to the looking after the cars that are loaded by the freight handlers, wouldn't that make some difference in the result of your estimate as to the cost of handling freight per ton over the platform?"

A. "Yes sir."

(Trans. pages 136 and 137.)

And said Special Master should have found that there were 58,866 tons of classified freight handled over the platform at the Indianapolis freight station in the year 1905, (Record p. 118) and that the office force at said station cost $16,709.90 (Record p. 119) twenty per cent. of which was chargeable to platform freight, (Record p. 195) and that instead of charging each ton of said platform freight with 28.4 cents office expense, (Record p. 119), only 5.6 cents should have been charged, and that therefore the cost of

41 handling platform freight was 47.6 cents per ton instead of 70.4 cents per ton.

25. The said report is erroneous in that the Special Master finds that "there has not been any evidence introduced by the defendants which impeaches the general accuracy" of the figures stated in said report, for the evidence shows the following:

Mr. John H. Buchanan, produced as a witness on behalf of complainant, on cross examination, testified to the following facts:

That the total weight of all classified freight originating and ending on complainant's line of road between Indianapolis and the Illinois state line, in the year 1904, was 68,492,665 pounds (or 34,246.3 tons); that in the year 1905 the tonnage was 77,776,327 pounds (or 38,888.1635 tons); and that in the year 1906 the tonnage was 90,881,556, (or 45,440.778 tons). Record pp. 35 and 36.)

That the total weight of all classified freight originating in Indianapolis and ending on the complainant's line between Indianapolis and the Illinois state line for the year 1904 was 24,279,433 pounds, (or 12139.7 tons); for the year 1905 it was 26,803,520 pounds (or (13,401.260 tons); for the year 1906 it was 29,959,712 pounds (or 14,979.856 tons). (Record p. 36.)

That the total weight of each class of the classified freight originating and terminating on complainant's line between Indianapolis and the Illinois state line for each of the years 1904, 1905 and 1906, respectively, is as follows, to-wit:

For the year 1904:

First	class	5,835,066	pounds
Second	"	2,813,747	"
42 Third	class	10,936,271	pounds
Fourth	"	5,398,290	"
Fifth	"	39,751,349	"
Sixth	"	3,730,942	"

(Record pp. 36 and 37.)

For the year 1905:

First	class	6,395,326	pounds
Second	"	4,743,012	"
Third	"	10,688,749	"
Fourth	"	5,868,931	"
Fifth	"	41,074,459	"
Sixth	"	9,005,850	"

(Record pp. 38 and 39.)

For the year 1906:

First	class	6,735,894	pounds
Second	"	3,124,772	"
Third	"	12,558,097	"
Fourth	"	6,802,485	"
Fifth	"	49,175,432	"
Sixth	"	12,484,876	"

(Record pp. 39 and 40.)

That the total weight of each class of the classified freight originating at Indianapolis and destined to some point on complainant's line between Indianapolis and the Illinois state line, for each of the years 1904, 1905 and 1906, respectively, is as follows, to-wit:

For the year 1904:

First	class	3,909,146	pounds
Second	"	1,773,083	"
Third	"	8,042,417	"
43 Fourth	class	3,265,131	pounds
Fifth	"	5,873,164	"
Sixth	"	1,416,492	"

(Record pp. 40 and 41.)

For the year 1905:

First class	4,069,903	Pounds
Second "	2,882,174	"
Third "	7,688,010	"
Fourth "	3,602,011	"
Fifth "	6,119,862	"
Sixth "	2,440,560	"

(Record pp. 41 and 42.)

For the year 1906:

First class	4,456,371	pounds
Second "	2,003,666	"
Third "	8,759,175	"
Fourth "	4,430,861	"
Fifth "	6,855,394	"
Sixth "	3,454,245	"

(Record pp. 42 and 43.)

That the total revenue derived from each class of the classified freight originating and terminating on complainant's line between Indianapolis and the Illinois state line for each of the years 1904, 1905 and 1906, respectively, based on complainant's rates is as follows, to-wit:

For the year 1904:

Revenue from first class	$14,627.70
" " second "	5,337.41
" " third "	16,873.24
" " fourth "	5,784.52
44 Revenue from fifth class	$34,385.50
" " sixth "	2,795.43

(Record pp. 45 and 46.)

For the year 1905:

Revenue from first class	$16,337.61
" " second "	9,342.88
" " third "	16,816.99
" " fourth "	6,383.41
" " fifth "	25,331.61
" " sixth "	6,815.06

(Record pp. 46 and 47.)

For the year 1906:

Revenue from first class	$17,309.56
" " second "	5,939.85
" " third "	19,668.21
" " fourth "	7,375.82
" " fifth "	42,500.97
" " sixth "	9,446.74

(Record pp. 47 and 48.)

That the total revenue derived from each class of the classified freight originating in Indianapolis and terminating on complainant's line at some point between Indianapolis and the Illinois state line for each of the years 1904, 1905, and 1906, respectively, based on complainant's rates, is as follows, to-wit:

For the year 1904:

Revenue from	first class	$10,051.83
" "	second "	3,466.12
" "	third "	12,693.88
" "	fourth "	3,485.66
" "	fifth "	5,454.79
45 Revenue from	sixth class	$1,052.24

(Record pp. 48 and 49.)

For the year 1905:

Revenue from	first class	$10,649.79
" "	second "	5,885.47
" "	third "	12,320.68
" "	fourth "	3,911.12
" "	fifth "	5,632.74
" "	sixth "	1,803.54

(Record pp. 49 to 51.)

For the year 1906:

Revenue from	first class	$11,745.81
" "	second "	3,905.17
" "	third "	14,088.32
" "	fourth "	4,801.64
" "	fifth "	6,301.56
" "	sixth "	2,644.70

(Record pp. 51 and 52.)

That the total revenue from classified freight originating and terminating on complainant's line between Indianapolis and the Illinois state line, had the Railroad Commission's rates been collected instead of complainant's rates, for each of the years 1904, 1905 and 1906, respectively, would have been as follows:

1904 Revenue on Commission's rates....	$52,222.12
1905 Revenue on Commission's rates....	60,079.13
1906 Revenue on Commission's rates....	66,936.99

(Record p. 28.)

That the total revenue from classified freight originating at Indianapolis and destined to some point on complainant's line
46 between Indianapolis and the Illinois state line, had the commission's rates been collected instead of complainant's

ates for each of the years 1904, 1905 and 1906, respectively, would ave been as follows:

1904 Revenue on Commission's rates....	$23,347.68
1905 Revenue on Commission's rates....	26,108.09
1906 Revenue on Commission's rates....	27,583.46

(Record p. 29.)

And it is further shown by the evidence (Exhibit No. —) that for he year ending December 31, 1905, the average gross earnings per on on all freight business on the complainant's system was 65.2 ents; that the average earnings per ton per mile on all freight usiness for the year ending December 31, 1905, was .74 of a cent; hat the average cost per ton per mile on said traffic was .59 of a cent nd that the average miles each ton of said traffic was carried was 8.4 miles.

And the evidence further shows that if 24,279,433 pounds or 2,139.7 tons was the total weight of class freight originating at ndianapolis in the year 1904 and destined to points on the com- lainant's line between Indianapolis and the Illinois state line, and f the revenue therefrom on the complainant's rates was $36,204.52, hen the average revenue per ton on said traffic was $2.98 or 14.9 ents per hundred pounds. And the further evidence shows (by omputation) that the average miles haul, that is, the average num- er of miles each ton of said traffic was hauled, was thirty-five miles; hat the total ton miles of haul of said traffic, that is, the total num- er of miles the entire tonnage of said traffic was hauled was 430,- 12 miles, and that the average revenue per ton per mile was 8.41 cents. By the same method of computation the evidence 7 shows that if the rates as ordered by the railroad commission had been applied to the above tonnage for the year ending ecember 31, 1904, the average revenue per ton would have been 1.92; the average miles each ton was hauled would have been thirty- ve miles, the total ton miles of haul would have been 430,412 and ie revenue per ton per mile would have been 5.42 cents.

And the evidence further shows that if 68,492,665 pounds or 4,246.3 tons was the total weight of class freight originating and rminating on complainant's road between Indianapolis and the linois state line in the year 1904 and if the revenue therefrom i the complainant's rates was $79,803.80, then the average revenue r ton on said traffic was $2.33 or 11.45 cents per hundred pounds. nd the evidence further shows (by computation) that the average iles haul, that is, the average number of miles each ton of said affic was hauled was 29 miles; that the total ton miles of haul of id traffic, that is, the total number of miles the entire tonnage of id traffic was hauled was 1,005,787 and that the average revenue r ton per mile was 7.93 cents. By the same method of computa- on, the evidence shows that if the rates as ordered by the Railroad mmission had been applied to said tonnage for the year ending ecember 31, 1904, the average revenue per ton would have been .52, the average miles each ton was hauled would have been 29

miles, the total ton miles of haul would have been 1,005,787 and the revenue per ton per mile would have been 5.42 cents.

And the evidence further shows that if 26,802,520 pounds or 13,401.26 tons was the total weight of all classified freight originating at Indianapolis in the year 1905 and destined to points on the complainant's line between Indianapolis and the Illinois state line,

48 and of the revenue therefrom on the complainant's rates was $40,203.34, then the average revenue per ton on said traffic was $3.00 or 15 cents per hundred pounds. And the evidence further shows (by computation) that the average miles haul, that is, the average number of miles each ton of said traffic was hauled was 39 miles; that the total ton miles of haul of said traffic, that is, the total number of miles the entire tonnage of said traffic was hauled was 526,252.41 miles and that the average revenue per ton per mile was 7.64 cents. By the same method of computation the evidence shows that if the rates as ordered by the railroad commission had been applied to the tonnage for the year ending December 31, 1905, the average revenue per ton would have been $1.95, the average miles each ton was hauled would have been 39 miles, the total ton miles of haul would have been 526,252.41 miles and the revenue per ton per mile would have been 4.96 cents.

And the evidence further shows that if 77,776,327 pounds or 38,888.1635 tons were the total weight of class freight originating and terminating on complainant's line between Indianapolis and the Illinois state line for the year ending December 31, 1905, and if the revenue therefrom on complainant's rates was $91,067.56, then the average revenue per ton on said traffic was $2.34 or 11.7 cents per hundred pounds.

And the evidence further shows (by computation) that the average miles haul, that is, the average number of miles each ton of said traffic was hauled was 29 miles; that the total ton miles of haul of said traffic was, that is, the total number of miles the entire tonnage of said traffic was hauled was 1,160,775.96 miles, and that the average revenue per ton per mile was 7.85 cents. By the same method of computation the evidence shows that if the rates as ordered by the railroad commission had been applied to the above tonnage for

49 the year ending December 31, 1905, the average revenue per ton would have been $1.54; the average miles each ton was hauled would have been 29 miles, the total ton miles of haul would have been 1,160,775.96 and the revenue per ton per mile would have been 5.175 cents.

And the evidence further shows that if 29,959,712 pounds of 14,979.856 tons was the total weight of class freight originating at Indianapolis in the year 1906 and destined to points on complainant's line between Indianapolis and Illinois state line, and if the revenue therefrom on the complainant's rates was $43,487.20 then the average revenue per ton on said traffic was $2.91 or 14.5 cents per hundred pounds.

And the evidence further shows (by computation) the average miles haul, that is, the average number of miles each ton of said traffic was hauled was 36.9 miles; that the total ton miles of haul

of said traffic, that is, the total number of miles the entire tonnage of said traffic was hauled was 552,731.75 miles, and that the average revenue per ton per mile was 7.87 cents. By the same method of computation the evidence shows that if the rates as ordered by the railroad commission had been applied to said tonnage for the year ending December 31, 1906, the average revenue per ton would have been $1.84, the average miles each ton was hauled would have been 36.9 miles, the total ton miles of haul would have been 552,731.73 miles and the revenue per ton per mile would have been 4.99 cents.

And the evidence further shows that if 90,881,556 pounds or 45,440.778 tons was the total weight of class freight originating and terminating on complainant's line between Indianapolis and the Illinois state line in the year ending December 31, 1906, and if the revenue therefrom on the complainant's rates was 102,241.16, then the average revenue per ton on said traffic was $2.25 or 11.2 cents per hundred pounds.

50 And the evidence further shows (by computation) that the average miles hauled, that is, the average number of miles each ton of said traffic was hauled was 29.8 miles; that the total ton miles of haul of said traffic, that is, the total number of miles the entire tonnage of said traffic was hauled was 1,356,420.85 miles, and that the average revenue per ton per mile was 7.54 cents. By the same method of computation the evidence shows that if the rates as ordered by the Railroad Commission had been applied to said tonnage for the year ending December 31, 1906, the average revenue per ton would have been $1.47, the average miles each ton was hauled would have been 29.8 miles, the total ton miles of haul would have been 1,356,420.85 miles and the revenue per ton per mile would have been 4.93 cents.

And the evidence further shows that the class rates on complainant's line between Indianapolis and the Illinois state line have been in effect for more than eighteen years without material change, except a revision upward due to a modification and change in the official classification.

(Record pp. 66 and 67.)

The evidence further shows that Mr. William Hodgdon in the years 1904, 1905 and 1906 was general freight agent of complainant's road (Record pp. 233 and 234); that after the filing of the petition of Schnull & Company before the Railroad Commission of Indiana, in which proceeding the order was made reducing the class rates, the said William Hodgdon filed with the Railroad Commission of Indiana a proposed schedule of class rates for complainant's line between Indianapolis and the Illinois state line (Record p. 236 to 240); that at that time said William Hodgdon had authority to create and establish rates on complainant's line (Record p. 235) and that said proposed schedule of class rates *are* as follows, to-wit:

51 *Mr. Hodgdon's Proposed Class Rates.*

From Indianapolis to Stations Named	Miles.	Classes. First.	Second.	Third	Fourth.	Fifth.	Sixth.
Ben Davis...	6	10	9	8	6	4	3
Bridgeport..	9	10½	9½	8½	6½	4½	3
Oak Plain...	11	..	..	..	..	..	..
Plainfield...	14	11	10	9	7	5	3½
Gibson.....	15	..	..	..	..	..	..
Cartersburg..	17	11½	10½	9½	7½	5	4
Clayton.....	20	..	..	..	..	..	..
Pecksburg...	23	..	..	..	..	..	..
Amo.....	25	12½	11½	10½	8	6	5
Coatsville...	28	..	..	..	..	..	..
Fillmore....	33	..	..	..	..	..	..
Alemeda....	36	14	12½	11½	8½	7	6
Greencastle..	39	..	..	..	..	..	..
Limedale...	40	..	..	..	..	..	..
Hamrick....	44	..	..	..	..	..	..
Reelsville...	47	..	..	..	..	..	..
Eagles.....	50	16	14½	13½	10	7½	6½
Harmony...	54	..	..	..	..	..	..
Knightsville.	55	..	..	..	..	..	..
Brazil.....	57	..	..	..	..	..	..
Turner.....	59	..	..	..	..	..	..
Terre Haute.	73	18	16	15	10½	8	7
Macksville..	75	..	..	..	..	..	..
Liggett.....	77	19½	18½	17	11	8½	7½
Nelson.....	79	..	..	..	..	..	..

52 Mr. Hodgdon testified that the basis for making these rates was generally this:

	Classes. 1	2	3	4	5	6	
"Fof five miles Transportation.....	6	5	4	3	2	1½	Cents
And add for Terminal Charges.....	4	4	4	3	2	1½	Cents

"For each five miles add one-half cent per hundred pounds on each class. Modify the rates so that the fifth and sixth class rates will in no case be higher than the minimum C. F. A. Scale. * * *"

(Trans. pp. 285 and 286.)

And the record shows Mr. Hodgdon testified as follows:

Q. "When the letters "C. F. A." are used, what do you mean by C. F. A.?

A. "Central Freight Association territory—that is the territory

east of the Mississippi, north of the Ohio and Potomac, reaching North to the United States-Canada line and east to the Sea-Board;—no, east of the western terminii of the trunk lines."

Q. "And south of the Great Lakes? It goes as far North as the Great Lakes?"

A. "Yes sir."

Q. "The C. F. A. don't have anything to do with the rates from Chicago west?"

A. "No."

Q. "In other words, if I understand you correctly, the railroads, or most of the railroads within the territory East of the Mississippi River, north of the Ohio River, west of Pittsburgh, and
53 South of the Lakes have gotten together and agreed upon a scale of rates and that is known as the Central Freight Association rate, or C. F. A rate, is that right?"

A. "That is not exactly a correct statement."

Q. "Please give me a correct statement."

A. "There is a scale of rates which is compiled, and which is the minimum class rate basis, which is in effect for given distances upon railroads in that territory; in other words, your statement makes the scale the basis upon which the tariff is made and my statement is that it is a scale drawn from the rates made by the railroads showing the minimum rates."

Q. "And the C. F. A. class rate is now used by the Pennsylvania Lines west of Pittsburgh and East of Indianapolis?

A. "As the minimum."

Q. "In other words, the C. F. A. scale is the rate used by Pennsylvania lines in the Central Freight Association territory, as you have testified?"

A. "No sir, it is not."

Q. "The C. F. A. class rates govern from Indianapolis east on the Pennsylvania lines, does it not, in the state of Indiana?"

A. "On the P. C. C. & St. L. out of Indianapolis, it governs."

Q. "That is, it governs on the line South to Louisville, from Indianapolis to Louisville, and Indianapolis to Jeffersonville, on the Pennsylvania lines, from Indianapolis, and from Indianapolis to the Ohio state lines running east, and out of Indianapolis running north?"

A. "The minimum rates are used in that territory."

Q. "And that is true also, Mr. Hodgdon, with reference to the Vincennes division of the Vandalia Railroad Company?"

A. "Yes sir."

(Trans., pp. 243 to 245.)

54 And the Record shows the Central Freight Association scale of class rates to be as follows, to-wit:

Central Freight Association.

Scale of Minimum Class Rates.

Information Circular 2495.

Rates in Cents per 100 Pounds.

Miles.	Classes.					
	1	2	3	4	5	6
5	7½	7½	7	6	4	3
10	7½	7½	7	6	4½	3
15	7½	7½	7½	7	5	3½
20	7½	7½	7½	7	5	4
25	7½	7½	7½	7	5½	4½
30	7½	7½	7½	7	6	5
35	8½	8½	8	7½	6½	5½
40	9½	9½	9	8	7	6
45	10½	10½	10	8	7½	6
50	12	11½	10½	8½	7½	6½
55	13	12½	11½	9	7½	6½
60	14½	13	12	10	7½	6½
65	15½	14	13	10	7½	7
70	17	15	13½	10	8	7
75	18	16	15	10½	8	7
80	19½	18½	17	11	8½	7½
85	21	19	17	11½	8½	7½
90	22	20	17	12	9	8
95	23	22	18	12	9	8
100	24	22	19	12½	9	8
110	24½	22	19½	12½	9	8
120	25	22	19½	12½	9½	8
55						
130	26	23	19½	13	10	8½
140	27½	24	20	13	10	8½
150	28½	25	20	13½	10½	8½
160	30	26	21	13½	11	9
170	31	26½	21½	14	11	9
180	31½	27	21½	14	11½	9
190	32	28	22	14½	11½	9½
200	33	28½	22	15	12	9½
210	34	29½	22½	15	12½	10
220	35	30	22½	15	13	10
230	35½	30½	23	15½	13	10½
240	36	31	23	16	13	10½
250	37	32	23½	16	13½	10½
275	38½	33	24½	16½	14	11
300	40	34	25	17	14½	11½
325	41	35	26	18	15	12
350	42	36	27	18½	15½	13
375	43	36½	27½	19	16½	13½
400	44	37½	28½	19½	17	14
425	44½	38½	29	20½	17½	14½
450	45	39	30	21	18	15

And the evidence further shows the following:

56 *Mileage and Local Class Freight Rates from Indianapolis East on Pennsylvania Railroad (Pittsburg Division) Compared with Mileage and Present Local Class Freight Rates on Complainant Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Complainant's Point; Second Line Penn. Point.*

		Classes.					
From Indianapolis—	Miles.	First.	Second.	Third.	Fourth.	Fifth.	Sixth.
To Ben Davis, Ind.....	6.1	10	9	8	7	5	4
" Irvington, Ind.....	5	7½	7½	7	6	4	3
" Plainfield, Ind.....	13.6	15	13	11	9	6½	5½
" Cumberlain, Ind....	15	7½	7½	7½	7	5	3½
" Cartersburg.....	16.9	18	15	12	10	7	6
" Philadelphia.....	17	7½	7½	7½	7	5	4
" Amo, Ind.....	24.9	20	18	14½	11	8	7
" Greenfield, Ind.....	21	7½	7½	7½	7	5½	4½
" Coatsville, Ind.....	28	20	18	14½	11	8	7
" Charlottesville.....	29	7½	7½	7½	7	6	5
" Fillmore, Ind.....	32.6	22	20	17	12	9	8
" Knightstown, Ind...	34	8½	8½	8	7½	6½	5½
" Greencastle, Ind....	38.9	22	20	17	12	9	8
" Dunreith, Ind.....	39	9½	9½	9	8	7	6
" Hamrick, Ind.....	43.8	24½	22	19½	12½	9	8
" Lewisville, Ind.....	44	10½	10½	10	8	7½	6
" Eagles, Ind.....	50	24½	22	19½	12½	9	8
" Strawis, Ind.....	47	12	11½	10½	8½	7½	6½
" Turner, Ind.....	59	25	22	19½	12½	9½	8
" Germantown, Ind...	55	13	12½	11½	9	7½	6½
" Terre Haute, Ind....	72.7	25	22	19½	12½	9½	8
" Richmond, Ind.....	68	17	15	13½	10	8	7

57 *Mileage and Local Class Freight Rates from Indianapolis on C. H. & D. (Cincinnati Division) Compared with Mileage and Present Local Class Freight Rates on Complainant's Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is C. H. & D. (Cincinnati Division) Point; Second Line Complainant Point.*

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Irvington, Ind.	5	7½	7½	7	6	4	3
Ben Davis, Ind.	6.1	10	9	8	7	5	4
New Palestine, Ind.	15	7½	7½	7	7	5	3½
Plainfield, Ind.	13.6	15	15	11	9	6½	5½
Reedsville, Ind.	18	7½	7½	7½	7	5	4
Cartersburg, Ind.	16.9	18	15	12	10	7	6
Morristown, Ind.	25	7½	7½	7½	7	6	5
Amo, Ind.	24.9	20	18	14½	11	8	7
Arlington, Ind.	32	8½	8½	8	7½	6½	5½
Fillmore, Ind.	32.6	22	20	17	12	9	8
Rushville, Ind.	40	9½	9½	9	8	7	6
Greencastle, Ind.	38.9	22	20	17	12	9	8
Griffins, Ind.	45	12	11½	10½	8½	7½	6½
Hamrick, Ind.	43.8	24½	22	19½	12½	9	8
Greenwood, Ind.	48	12	11½	10½	8½	7½	6½
Eagles, Ind.	50	24½	22	19½	12½	9	8
Connersville, Ind.	57	14½	13	12	10½	7½	6½
Knightsville, Ind.	54.8	24½	22	19½	12½	9	8
Brownville, Ind.	65	15½	14	13	10	7½	7
Seelyville, Ind.	65.2	25	22	19½	12½	9½	8
Liberty, Ind.	71	18	16	15	10½	8	7
Terre Haute, Ind.	72.7	25	22	19½	12½	9½	8

58 *Mileage and Local Class Freight Rates from Indianapolis on Complainant's Road (Vincennes Division) Compared with Mileage and Present Local Class Freight Rates on Complainant's Road (St. Louis Division), from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Vincennes Division Point; Second Line Complainant's Point.*

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
West Newton, Ind	11	7½	7½	7½	7	5	3½
Bridgeport, Ind	8.8	12	11	10	8	6	5
Mooresville, Ind	16	7½	7½	7½	7	5	4
Cartersburg, Ind	16.9	18	15	12	10	7	6
Brooklyn, Ind	20	7½	7½	7½	7	5½	4½
Clayton, Ind	20.1	18	15	12	10	7	6
Campbell, Ind	25	7½	7½	7½	7	5½	4½
Amo, Ind	24.9	20	18	14½	11	8	7
Martinsville, Ind	30	7½	7½	7½	7	6	5
Coatsville, Ind	28	20	18	14½	11	8	7
Hynds, Ind	33	8½	8½	8	7½	6½	5½
Fillmore, Ind	32.6	22	20	17	12	9	8
Whittakers, Ind	40	9½	9½	9	8	7	6
Limedale, Ind	40.3	22	20	17	12	9	8
Hamrick, Ind	43.8	24½	22	19½	12½	9	8
Gosport, Ind	44	10½	10½	10	8	7½	6
Roma, Ind	49	12	11½	10½	8½	7½	6½
Reelsville, Ind	47.3	24½	22	19½	12½	9	8
Spencer, Ind	53	13	12½	11½	9	7½	6½
Harmony, Ind	53	24½	22	19½	12½	9	8
Freedom, Ind	62	15½	14	13	10	7½	7
Staunton, Ind	60.9	25	22	19½	12½	9½	8
Farmers, Ind	65	15½	14	13	10	7½	7
Seelyville, Ind	65.2	25	22	19½	12½	9½	8
Worthington, Ind	71	18	16	15	10½	8	7
Terre Haute, Ind	72.7	25	22	19½	12½	9½	8
Switz City, Ind	79	19½	18½	17	11	8½	7½
Nelson, Ind	79.1	25	22	19½	12½	9½	8

59 *Mileage and Local Class Freight Rates from Indianapolis on Pennsylvania Railroad (Louisville Division) Compared with Mileage and Present Local Class Freight Rates on Complainant's Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Penn. Point; Second Line Complainant's Point.*

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Southport, Ind.....	7	6	6	6	6	4½	3
Ben Davis, Ind.....	6.1	10	9	8	7	5	4
Greenwood, Ind.....	11	6	6	6	6	5	3½
Bridgeport, Ind.....	8.8	12	11	10	8	6	5
Whitehead, Ind.....	15	7½	7½	7½	7	5	3½
Plainfield, Ind.....	13.6	15	13	11	9	6½	5½
Franklin, Ind.....	20	7½	7½	7½	7	5	4
Cartersburg, Ind.....	16.9	18	15	12	10	7	6
Amity, Ind.....	25	7½	7½	7½	7	5½	4½
Amo, Ind.....	24.9	20	18	14½	11	8	7
Edinburg, Ind.....	31	8½	8½	8	7½	6½	5½
Coatsville, Ind.....	28	20	18	14½	11	8	7
Taylorsville, Ind.....	35	8½	8½	8	7½	6½	5½
Fillmore, Ind.....	32.6	22	20	17	12	9	8
Columbus, Ind.....	41	10½	10½	10	8	7½	6
Greencastle, Ind.....	38.9	22	20	17	12	9	8
Walesboro, Ind.....	46	12	11½	10½	8½	7½	6½
Hamrick, Ind.....	43.8	24½	22	19½	12½	9	8
Jonesville, Ind.....	52	13	12½	11½	9	7½	6½
Eagles, Ind.....	50.4	24½	22	19½	12½	9	8
Rockford, Ind.....	57	14½	13	12	10	7½	6½
Knightsville, Ind.....	54.8	25½	22	19½	12½	9	8
Seymour, Ind.....	59	14½	13	12	10	7½	6½
Turner, Ind.....	59	25	22	19½	12½	9½	8
Chestnut Ridge, Ind....	64	15½	14	13	10	7½	7
Seelyville, Ind.....	65.2	25	22	19½	12½	9½	8

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Crothersville, Ind.....	71	18	16	15	10½	8	7
Terre Haute, Ind.....	72.7	25	22	19½	12½	9½	8
Austin, Ind.....	75	18	16	16	10½	8	7
Macksville, Ind.....	75.1	25	22	19½	12½	9½	8
Scottsburg, Ind.....	79	19½	18½	17	11	8½	9½
Nelson, Ind.....	79.1	25	22	19½	12½	9½	8

61 *Mileage and Local Class Rates on Complainant's Road (St. Louis Division) from Indianapolis Compared with Class Rates by the State Railroad Commission.*

Classes.

Class Rates by the State Railroad Commission.

From Indianapolis to—		Classes. 1st.	2nd.	3rd.	4th.	5th.	6th.	
Ben Davis	6.1	10	9	8	7	5	4	Present Rates.
		8	7	6½	5	5½	2½	Comm's Order.
Bridgeport	9	12	11	10	8	6	5	Present Rates.
		8½	7½	7	5	4	3	Comm's Order.
Oak Plain	11	15	13	11	9	6½	5½	Present Rates.
		8½	7½	7	5	4	3	Comm's Order.
Plainfield	14	15	13	11	9	6½	5½	Present Rates.
		9	8	7	5½	4	5	Comm's Order.
Gibson	15	15	13	11	9	6½	5½	Present Rates.
		9	8	7	5½	4	3	Comm's Order.
Cartersburg	17	18	15	12	10	7	6	Present Rates.
		9½	8½	7½	5½	4½	3	Comm's Order.
Clayton	20	18	15	12	10	7	6	Present Rates.
		9½	8½	7½	5½	4½	3	Comm's Order.
Pecksburg	23	20	18	14½	11	8	7	Present Rates.
		10½	9½	8½	6½	4½	3½	Comm's Order.
Amo	25	20	18	14½	11	8	7	Present Rates.
		10½	9½	8½	6½	4½	3½	Comm's Order.
Coatesville	28	20	18	14½	11	8	7	Present Rates.
		11	10	9	6½	5	3½	Comm's Order.
Fillmore	33	22	20	17	12	9	8	Present Rates.
		11½	10½	9	7	5	4	Comm's Order.
Almeda	36	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.
Greencastle	39	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.

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From Indianapolis to—	Miles.	Classes. 1st,	2nd.	3rd.	4th.	5th.	6th.	
Limedale	40	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.
Hamrick	44	24½	22	19½	12½	9	8	Present Rates.
		13	12	10½	8	6	4½	Comm's Order.
Reelsville	47	24½	22	19½	12½	9	8	Present Rates.
		13½	12	11	8	6	4½	Comm's Order.
62								
Eagles	50	24½	22	19½	12½	9	8	Present Rates.
		13½	12	11	8	6	4½	Comm's Order.
Harmony	54	24½	22	19½	12½	9	8	Present Rates.
		14	12½	11	8½	6½	4½	Comm's Order.
Knightsville	55	24½	22	19½	12½	9	8	Present Rates.
		14	12½	11	8½	6½	4½	Comm's Order.
Brazil	57	24½	22	19½	12½	9	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Turner	59	25	22	19½	12½	9½	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Staunton	61	25	22	19½	12½	9½	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Cloverland	63	25	22	19½	12½	9½	8	Present Rates.
		15½	14	12½	9½	7	5	Comm's Order.
Seelyville	65	25	22	19½	12½	9½	8	Present Rates.
		15½	14	12½	9½	7	5	Comm's Order.
Prairie	71	25	22	19½	12½	9½	8	Present Rates.
		16	14½	13	9½	7	5½	Comm's Order.
Terre Haute	73	25	22	19½	12½	9½	8	Present Rates.
		16½	15	13	10	7½	5½	Comm's Order.

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63 The evidence further shows that the rate per hundred pounds from New York to Terre Haute by way of complainant's line for the six classes are as follows:

Classes	1	2	3	4	5	6
In Cents	70	60	45	30	25	20

And that complainant receives as its portion of said rates for hauling from Indianapolis to Terre Haute per hundred pounds 15% or as follows:

Classes	1	2	3	4	5	6
In Cents	105	.09	.0675	.045	.0375	.03

(Record p. —.)

The evidence further shows that complainant receives as its portion of the rate per hundred pounds from Chicago to Greencastle by way of the C. & E. I. R. R. Co. and complainant's road the following amounts on the respective classes to-wit:

Classes	1	2	3	4	5	6
In Cents	.0945	.81	.0645	.042	.0345	.03

Record, p. —.

And defendants say the Special Master ignored this evidence in making his finding and that from this evidence, as well as from all the evidence in the record, it is shown that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would not reduce the earnings of complainant below its operating expenses, but, on the contrary, would show a reasonable profit to complainant.

64 *As to the Conclusion of Law.*

And the defendants except to the Special Master's conclusion of law in this:

1. That the Special Master's conclusion of law is not sustained by sufficient evidence.

2. That the Special Master's conclusion of law is not sustained by the law and the evidence.

3. That the enforcement of the schedule of rates ordered by the Railroad Commission would not deprive complainant of its property without due process of law within the meaning of the constitution of the United States and in violation of its provisions.

BERNARD KORBLY,
WILLARD NEW,
Attorneys for Schnull & Co.

Hon. JAMES BINGHAM,
Att'y Gen. of Indiana, for Other Defendants.

65 And afterwards, to-wit, at the May Term of said Court, on the 10th day of June, 1909, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now the defendants by counsel and file their motion to dismiss the above entitled cause, in the words following, to-wit:

Motion of Defendants to Dismiss Complainant's Bill of Complaint.

Come now the defendants in the above entitled cause and object to the jurisdiction of this Honorable Court over the controversy herein, and give the court to understand and be informed that complainant's bill of complaint shows upon its face that said complainant is seeking to have declared null and void an order of the Railroad Commission of Indiana, made December 14th, 1906, fixing and establishing certain rates for the transportation over the lines of complainant from Indianapolis, Indiana, to the Indiana-Illinois State line, and to restrain each of defendants from enforcing said order or instituting or prosecuting any suits against complainant for the violation of said order.

These defendants further show to the court that it does not appear from the face of the complainant's bill of complaint that complainant has ever prosecuted an appeal to the Appellate Court of the State of Indiana from the order of said Railroad Commission of Indiana in establishing and fixing said rates, and that it appears from the answer of defendants in said cause that no such appeal has in fact ever been prosecuted; that by Section 6 of an Act of the General Assembly of the State of Indiana, approved February 28th, 1905, (Acts 1905), pages 68 and 69), it is provided that if any rate, classification or rule, charge or general regulation, made, approved, adopted or ordered by said Commission shall be unsatisfactory to any railroad company, said railroad company may appeal from the decision of said railroad commission to said Appellate Court of the State of Indiana, and that the Appellate Court shall have power to affirm the action of the Commission appealed from or to

66 change, modify or set aside the same as justice may require.

That the order, which said complainant is seeking to have set aside and declared null and void, was made by said railroad commission of Indiana under and pursuant to said Act of the General Assembly of the State of Indiana, hereinbefore mentioned and described; that the complainant in this cause appeared before the Railroad Commission of Indiana at a hearing at which said rates, which it is seeking to have set aside and declared null and void, were established, and participated in said proceedings and introduced evidence before said Commission as to the unreasonable character and confiscatory nature of said rates.

These defendants further show to the court that said rates so established and fixed by said Railroad Commission of Indiana have never, as far as appears upon the face of complainant's bill of complaint, been given any actual test or trial by the complainant upon its said line of railway, and that it appears from the averments of

complainant's bill of complaint and on the face thereof that the said complainant has not actually tested or tried said rates by putting the same in actual operation for any period of time, and that the allegations in said bill of complaint, that said rates would be confiscatory is not based or founded upon any actual experience of said complainant under or in pursuance of the rates so established by said Commission; that, as appears from the complainant's bill of complaint and on the face thereof, the reductions made by said railroad commission of Indiana in the rates formerly received by complainant for the transportation of freight over the said line of railroad is not so arbitrary or unusual as to show upon its face that such rates are confiscatory and now the said defendants move the court for the reasons aforesaid to dismiss the complainant's bill of complaint without prejudice to complainant.

JAMES BINGHAM,
Attorney General of the State of Indiana,
Solicitor for Defendants.

BERNARD KORBLY,
EDWARD M. WHITE,
A. G. CAVINS,
W. H. THOMPSON,
Of Counsel.

67 STATE OF INDIANA,
County of Marion, ss:

James Bingham, being duly sworn upon his oath, deposes and says:

That the matters and things contained in the foregoing motion are true and correct, as he verily believes.

JAMES BINGHAM.

Subscribed and sworn to before me this 25th day of May, 1909.

[SEAL.] JEAN MOORE,
Notary Public.

My commisison will expire January 24, 1911.

And afterwards, to-wit, at the May Term of said Court, on the 29th day of June, 1909, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

On this day the exceptions of the defendants filed herein on the fifth day of April, 1909, to the report of the special master filed herein on the sixth day of March, 1909, came on to be heard and the same having been argued by counsel for the complainant and the defendants, respectively, and the court being fully advised in the premises, now overrules each and all of said exceptions, and it is now ordered and adjudged that said report of the Special Master be, and the same is in all respects confirmed.

The motion by the defendants to dismiss this cause, filed herein on the tenth day of June, 1909, also coming on to be heard, and

the same having been argued by the counsel for the parties, respectively, and the court being fully advised in the premises, now overruled said motion.

And this cause is now set down for final hearing on the bill of complaint, the amendment thereto filed May 4, 1907, the answer, the replication, the report of the special master filed herein
68 on the sixth day of March, 1909, with the testimony and exhibits and other evidence accompanying the same, and the court having heard the arguments of counsel for the parties, respectively, and being fully advised in the premises, now finds that the equities are with the complainant and that complainant is entitled to the relief prayed in the bill of complaint.

It is therefore now ordered, adjudged and decreed by the court that the order of the Railroad Commission of Indiana, made and entered under date of December 14, 1906, effective February 1, 1907, establishing maximum rates for the complainant in the transportation of traffic moving over its lines to all points from Indianapolis to Indiana-Illinois State line as then classified by the complainant and being the order of said Railroad Commission of Indiana set forth in the bill of complaint herein, be set aside and held void and of no force or effect as and from and after the date thereof.

It is further ordered, adjudged and decreed by the court that the defendants Union B. Hunt, William J. Wood and Charles V. McAdams, composing the Railroad Commission of the State of Indiana, and the successors in office of each and all of them, and defendant James Bingham, Attorney General of the State of Indiana, and defendant Elliott R. Hooton, Prosecuting Attorney in and for the County of Marion, State of Indiana, and each and all of the successors in office of said Bingham and said Hooton, respectively, be, and they are hereby perpetually enjoined and restrained from instituting or prosecuting, or causing to be instituted or prosecuted any suit or suits against the complainant for the recovery of any penalty or penalties claimed to be recoverable under any law of the State of Indiana, because of complainant's non-compliance with said order of the Railroad Commission of Indiana, dated December 14, 1906, and effective February 1, 1907.

It is further ordered, adjudged and decreed by the Court that defendants Gustave A. Schnull, William J. Griffin and George G. Griffin, and each of them, and any and all other persons sim-
69 ilarly situated with them as shippers or receivers of freight included within said order of the Railroad Commission of Indiana, be perpetually enjoined and restrained from instituting or prosecuting any suit or suits against the complainant for overcharges or damages of any kind claimed on account of complainant's non-compliance with said order of the Railroad Commission of Indiana, dated December 14th, 1906, and effective February 1, 1907.

It is further ordered, adjudged and decreed that the defendants pay the complainant all its costs in this behalf expended to be taxed by the clerk of this court.

70 And afterwards, to-wit, at the May Term of said Court, on the 9th day of May, 1910, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Come now William J. Wood, Gustav A. Schnull, William J. Griffin and George G. Griffin, and John F. McClure as successor to the above named defendants, Union B. Hunt, as a member of the Railroad Commission of Indiana, and Frank E. Payne, as successor to the above named defendant, Charles V. McAdams, as a member of said Railroad Commission of Indiana, and file in this cause a notice and request to join in an appeal of said cause heretofore served on Union B. Hunt, Charles V. McAdams, James Bingham and Elliott R. Hooton, which said notice and request was and is in the words and figures as follows, to-wit:

Union B. Hunt, Charles V. McAdams, James Bingham, and Elliott R. Hooton, you and each of you are hereby notified that the above named defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and John F. McClure, as successor to the above named defendant, Union B. Hunt, as a member of the Railroad Commission of Indiana, and Frank E. Payne, as successor to the above named defendant, Charles V. McAdams, as a member of said Commission, are proposing to join in a petition to be filed in the Circuit Court of the United States, for the District of Indiana, praying an appeal from the final decree, duly made and entered in the above entitled cause in equity on the 29th day of June, 1909, which petition is in these words:

71 In the Circuit Court of the United States for the District of Indiana.

VANDALIA RAILROAD COMPANY, Complainant,
v.
UNION B. HUNT, WILLIAM J. WOOD, CHARLES V. MCADAMS, JAMES Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin, and George G. Griffin, Defendants.

William J. Wood, Gustav A. Schnull, William J. Griffin and George G. Griffin, defendants above named, and John F. McClure, successor to said above named defendant, Union B. Hunt, as member of the Railroad Commission of Indiana, and Frank E. Payne, a-successor to the above named defendant, Charles V. McAdams, formerly a member of said Railroad Commission, feeling themselves aggrieved by the final decree given in the above entitles cause in equity, on the 29" day of June, 1909, whereby it was adjudged and decreed that an order of the Railroad Commission of Indiana, made and entered under date of December 14, 1906, effective February 1, 1907, establishing maximum rates for the complainant in the
72 transportation of classified freight moving over its line of railroad to all points from Indianapolis to the Indiana-Illinois State line, as then classified by the complainant, and being

the order of said Railroad Commission of Indiana set forth in the bill of complaint in the above entitled cause, to be set aside and held void, and of no force or effect from and after said date.

Whereby it was also adjudged and decreed that the above named defendants, Union B. Hunt, William J. Wood, and Charles V. McAdams, at the commencement of said cause composing the Railroad Commission of the State of Indiana, and the successors in office of each and all of them, and the above named defendant, James Bingham, attorney general of the State of Indiana, and defendant, Elliott R. Hooton, prosecuting attorney in and for the county of Marion, State of Indiana, and each and all of the successors in office of said James Bingham and Elliott R. Hooton, be perpetually enjoined and restrained from instituting or prosecuting, or causing to be instituted or prosecuted, any suit of suits against the complainant for the recovery of any penalty or penalties claimed to be recoverable under any law of the State of Indiana, because of complainant's non-compliance with said order of the Railroad Commission of Indiana, dated December 14, 1906, effective February 1, 1907, and that the above named defendants, Gustav A. Schnull, William J. Griffin, George G. Griffin, and each of them, and any and all other persons similarly situated with them as shippers or receivers of freight, included within the order of said Railroad Commission of Indiana, be perpetually enjoined and restrained from instituting or prosecuting any suit or suits against the complainant for overcharges or damages of any kind claimed on account of complainant's non-com-
73 pliance with said order of the Railroad Commission of Indiana, dated December 14, 1906, and effective February 1, 1907.

Your petitioners would further respectfully represent and show to the court that the above named defendants, Union B. Hunt, and Charles V. McAdams, were, at the time the above entitled cause was begun, members of the Railroad Commission of the State of Indiana, as aforesaid, but that before the said decree therein was made and entered both of said defendants had resigned as members of said Commission, and their said resignation had been duly accepted and their successors appointed; that said petitioner, John F. McClure, was appointed as a member of said commission as successor to said defendant, Union B. Hunt; that one Henry M. Dowling was appointed successor on said commission to said Charles V. McAdams, and was a member of said Railroad Commission on the date when said decree was made and entered as aforesaid; that subsequent to said date when said decree was made and entered, as aforesaid, to-wit, on the 1st day of January, 1910, said Henry M. Dowling duly tendered his resignation as member of said Commission, which resignation was duly accepted, and said petitioner, Frank E. Payne, was duly appointed to succeed said Henry M. Dowling upon said Commission, and that said Railroad Commission is now composed of said above named defendant, William J. Wood, and your petitioners John F. McClure and Frank E. Payne, and none other.

That said above named defendants, Union B. Hunt and Charles V. McAdams, are no longer connected with said Railroad Commission,

and no longer have any interest in this case, or the decree entered therein; that said Henry M. Dowling is no longer a member of said Railroad Commission, and has no interest therein or in said decree, or any appeal therefrom; that said Union B. Hunt, Charles
74 V. McAdams and Henry M. Dowling, and each of them, have been duly served with a request to join in this petition, and in the appeal herein prayed for, but that each and all of them have refused and do refuse to so join; that said defendants, James Bingham and Elliott R. Hooton have each been served with notice of this petition and request to join in this appeal, and both said James Bingham and Elliott R. Hooton have refused, and still refuse to join in this petition or in said appeal, which notice of this petition and request to said Union B. Hunt, Charles V. McAdams, James Bingham, Elliott R. Hooton, and Henry M. Dowling, with their acknowledgment of service thereof, and with the refusal of each and all of them to join in this petition, and in the appeal from said decree, are filed herewith.

And now said defendants William J. Wood, said John F. McClure, and Frank E. Payne, successors as aforesaid, Gustav A. Schnull, William J. Griffith, and George G. Griffin, by James Bingham, attorney general, their solicitor, come and petition this court for an order allowing said defendants and said John F. McClure and Frank E. Payne, as successors to membership in the Railroad Commission, as aforesaid, to prosecute an appeal from said decree to the supreme court of the United States, under and according to the laws of the United States in this behalf made, and pray that this appeal may be allowed, and that a transcript of the record and proceedings upon which decree was made, duly authenticated, may be sent to the supreme court of the United States.

And your petitioners further pray that said notice and request to said Union B. Hunt, Charles V. McAdams, Henry M. Dowling,
James Bingham and Elliott R. Hooton, and their several re-
75 fusals to join in this petition, and in an appeal from said decree, be made a part of the record in this cause, and that proper order of severance be made in the premises for the purposes of this appeal.

Dated March 29th, 1910.

JAMES BINGHAM,
Attorney General.

And you, and each of you, are hereby requested to join in said petition for an appeal, and you and each of you are hereby requested to join in an appeal from said decree entered in the above entitled cause in equity on the 29th day of June, 1909, which is more fully identified and described in the proposed petition aforesaid.

Dated this 29th day of March, 1910.

JAMES BINGHAM,
Attorney General, Solicitor for Defendants and Petitioners for Appeal.

I hereby acknowledge service of the foregoing notice and request, this 29th day of March, 1910.

UNION B. HUNT.
JAMES BINGHAM.
HENRY M. DOWLING (April 8, 1910).
ELLIOTT R. HOOTON, *Pros. Att'y.*
CHARLES V. McADAMS.

76 And the said named persons also file the following declination of the said Union B. Hunt, Charles V. McAdams, Elliott R. Hooton and James Bingham to join in the petition to appeal from the decree in said cause, and the refusal of each of said above named persons to appeal therefrom, and also the declination of Henry Dowling, who was the successor on said Railroad Commission of Indiana to Charles V. McAdams, and who was succeeded on said Railroad Commission of Indiana by Frank E. Payne, which said declinations were and are in the words and figures as follows, to-wit:

77 To defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and Petitioners, John F. McClure and Frank E. Payne, and to the Circuit Court of the United States for the District of Indiana:

You, and each of you, are hereby notified that I am the Union B. Hunt who is named as defendant in the cause entitled Vandalia Railroad Company, Complainant, v. Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, Defendants, In Equity, in the Circuit Court of the United States for the District of Indiana, in which final decree was duly made and entered on the 29th day of June, 1909, which decree is more particularly described and referred to in the foregoing notice and request, and that I will not join in a petition to appeal from said decree in said cause, or in said petition referred to in said foregoing notice and request, or any other petition for appeal from said decree, and that I will not individually appeal therefrom, and I hereby decline to join in said petition referred to in said notice and request, or any other petition for such appeal, and I also hereby decline to join in an appeal from said decree, and also to appeal from said decree as an individual.

Dated this 29th day of March, 1910.

UNION B. HUNT.

78 To Defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and Petitioners, John F. McClure and Frank E. Payne, and to the Circuit Court of the United States for the District of Indiana:

You, and each of you, are hereby notified that I am the Charles V. McAdams who is named as defendant in the cause entitled Vandalia Railroad Company, Complainant, v. Union B. Hunt, William

J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, Defendants, In Equity, in the Circuit Court of the United States for the District of Indiana, in which final decree was duly made and entered on the 29″ day of June, 1909, which decree is more particularly described and referred to in the foregoing notice and request, and that I will not join in a petition to appeal from said decree in said cause, or in said petition referred to in said foregoing notice and request, or any other petition for appeal from said decree, and that I will not individually appeal therefrom, and I hereby decline to join in said petition referred to in said notice and request, or any other petition for such appeal, and I also hereby decline to join in an appeal from said decree, and also to appeal from said decree as an individual.

Dated this 1st day of April, 1910.

CHAS. V. McADAMS.

79 To Defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and Petitioners, John F. McClure and Frank E. Payne, and to the Circuit Court of the United States for the District of Indiana:

You, and each of you, are hereby notified that I am the Elliott R. Hooton who is named as defendant in the cause entitled Vandalia Railroad Company, Complainant, v. Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, Defendants, In Equity, in the Circuit Court of the United States for the District of Indiana, in which final decree was duly made and entered on the 29″ day of June, 1909, which decree is more particularly described and referred to in the foregoing notice and request, and that I will not join in a petition to appeal from said decree in said cause, or in said petition referred to in said foregoing notice and request, or any other petition for appeal from said decree, and that I will not individually appeal therefrom, and I hereby decline to join in said petition referred to in said notice and request, or any other petition for such appeal, and I also hereby decline to join in an appeal from said decree, and also to appeal from said decree as an individual.

Dated this 1st day of April, 1910.

ELLIOTT R. HOOTON.

80 To Defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and Petitioners, John F. McClure and Frank E. Payne, and to the Circuit Court of the United States for the District of Indiana:

You, and each of you, are hereby notified that I am the James Bingham who is named as defendant in the cause entitled Vandalia Railroad Company, Complainant, v. Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, De-

fendants, In Equity, in the Circuit Court of the United States for the District of Indiana, in which final decree was duly made and entered on the 29″ day of June, 1909, which decree is more particularly described and referred to in the foregoing notice and request, and that I will not join in a petition to appeal from said decree in said cause, or in said petition referred to in said foregoing notice and request, or any other petition for appeal from said decree, and that I will not individually appeal therefrom, and I hereby decline to join in said petition referred to in said notice and request, or any other petition for such appeal, and I also hereby decline to join in an appeal from said decree, and also to appeal from said decree as an individual.

Dated this 7th day of April, 1910.

JAMES BINGHAM.

81 To Defendants, William J. Wood, Gustav A. Schnull, William J. Griffin, and George G. Griffin, and Petitioners, John F. McClure and Frank E. Payne, and to the Circuit Court of the United States for the District of Indiana:

You, and each of you, are hereby notified that I am the Henry Dowling who is named as defendant in the cause entitled Vandalia Railroad Company, Complainant, v. Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin, Defendants, In Equity, in the Circuit Court of the United States for the District of Indiana, in which final decree was duly made and entered on the 29″ day of June, 1909, which decree is more particularly described and referred to in the foregoing notice and request, and that I will not join in a petition to appeal from said decree in said cause, or in said petition referred to in said foregoing notice and request, or any other petition for appeal from said decree, and that I will not individually appeal therefrom, and I hereby decline to join in said petition referred to in said notice and request, or any other petition for such appeal, and I also hereby decline to join in an appeal from said decree, and also to appeal from said decree as an individual.

Dated this 8th day of April, 1910.

HENRY M. DOWLING.

82 And the said named William J. Wood, Gustav A. Schnull, William J. Griffin, George G. Griffin, John F. McClure and Frank E. Payne having prayed for an order of substitution and severance in said cause, and the Court being duly advised in the premises, it is now in consideration whereof ordered, adjudged and decreed by the Court that the said John F. McClure be substituted in the place of Union B. Hunt, and that the said Frank E. Payne be substituted in place of the said Charles V. McAdams, and that the said McClure and Payne be allowed to prosecute and appeal from the decree in the above entitled cause, and that an order of severance be and is hereby granted, allowing said defendants to appeal from said decree without joining Union B. Hunt, Charles V. McAdams,

James Bingham, Elliott R. Hooton or Henry Dowling, and that each and all of said last above named persons be and hereby are forever debarred from prosecuting any appeal whatsoever from the decree in the above entitled cause.

—— ——.

83 And afterwards, towit, at the May Term of said Court, on the 20th day of May, 1910, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, towit:

Come now William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin and George C. Griffin, defendants and substituted defendants herein, by counsel and file their petition for appeal and assignment of errors in the words following, to-wit:

William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin and George C. Griffin, defendants and substituted defendants in the above entitled cause, feeling themselves aggrieved by the final decree made in the above entitled cause in equity, dated the 29th day of June, 1909, whereby it was adjudged and decreed that an order of the Railroad Commission of Indiana made and entered under date of December 14th, 1906, effective February 1st, 1907, establishing maximum rates for the complainant in the transportation of traffic moving over its lines to all points from Indianapolis to the Indiana-Illinois state line as then classified by the complainant, be set aside and held void and of no force or effect, and that each and all of the defendants be perpetually enjoined and restrained from enforcing said order or prosecuting or causing to be instituted or prosecuted any suit or suits against the complainant for the recovery of any penalties claimed to be recoverable under any law in the State of Indiana because of complainant's non-compliance with said order of the Railroad Commission, and enjoined and restrained from instituting or prosecuting any suit or suits against the complainant for over charges or damages on account of complainant's non-compliance with said order of the Railroad Commission of Indiana, now come by James Bingham, Attorney General of Indiana, their solicitor, and petition this Court for an order allowing said defendants to prosecute an appeal from said decree to the Supreme Court of the United States under and according to the laws of the United States in this behalf

84 made, and pray that this appeal may be allowed and that a transcript of the record and proceedings upon which said decree was made duly authenticated may be sent to the Supreme Court of the United States.

Dated this 20th day of May, 1910.

JAMES BINGHAM,
Attorney General,
Solicitor for Defendants.

The foregoing appeal is hereby allowed this 20th day of May, 1910.

ALBERT B. ANDERSON, *Judge.*

Assignment of Errors.

William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin, and George G. Griffin, defendants and appellants, by James Bingham, Attorney General of Indiana, as solicitor, in connection with their petition for an appeal to the Supreme Court of the United States, from the final decree of the United States Circuit Court in and for the District of Indiana, made and entered on the 29th day of June, 1909, make the following assignments of error in said decree:

85 I. The court erred in overruling the motion of defendants to dismiss the complainant's bill of complaint filed June 10, 1909 in said cause, and in finding and decreeing that the complainant had the right to maintain a bill in equity to declare null and void an order of the Railroad Commission of Indiana made December 14, 1906, effective February 1, 1907, prescribing and establishing certain rates for the transportation of classified freight over the line of railroad of complainant from Indianapolis, Indiana to the Indiana-Illinois State Line, without the complainant having first made an actual test or trial of said rates so established by said Railroad Commission of Indiana, for the transportation of classified freight over the complainant's line of railroad from Indianapolis, Indiana to the Indiana-Illinois State Line, and without the complainant having first put said rates in actual operation for any period of time, when the allegations of the bill of complaint that such rates would be confiscatory, show upon their face that they were not based or founded upon information obtained from an actual test or experience of complainant, or any one else, in making such a test.

86 II. The court erred in overruling the motion of defendants filed in said cause on the 10" dav of June, 1909, to dismiss complainant's bill of complaint on the grounds stated in said motion, towit:

That it did not appear from complainant's bill of complaint that the complainant had ever made any test or trial upon its said line of railroad, from Indianapolis, Indiana to the Indiana-Illinois State line, of the maximum rates prescribed and established by the Railroad Commission of Indiana, for the transportation of classified freight from Indianapolis, Indiana, to the Indiana-Illinois State line, under date of December 14, 1906, effective February 1, 1907, prior to the finding of said bill of complaint for any period of time.

III. The court erred in finding and decreeing that the maximum rates for transportation of classified freight over the line of

87 railroad of the complainant from Indianapolis, Indiana to the Indiana-Illinois State line, prescribed and established by the order of the Railroad Commission of Indiana, dated December 14, 1906, effective February 1, 1907, were confiscatory and would compel the complainant to carry such classified freight at less than the actual cost of such carriage, and that complainant would, if such order was enforced, be deprived of its property without due process

of law, and be denied the equal protection of the law, contrary to the provisions of section 1, article 14, of the constitution of the United States.

IV. The court erred in finding and decreeing that the maximum rates for transportation of classified freight over the line of railroad of the complainant, from Indianapolis, Indiana to the Indiana-Illinois State line, prescribed and established by the order of the Railroad Commission of Indiana, dated December 14, 1906, effective February 1, 1907, were confiscatory and would compel the complainant to carry such classified freight at less than the actual cost of such carriage, and that complainant would, if such order were enforced, be deprived of its property without due process of law, and be denied the equal protection of the law, contrary to the pro-
88 visions of section 1, article 14 of the constitution of the United States, in the absence of any proof that the complainant had at any time, prior to the final decree of said court, made any test or trial of the maximum rates for the transportation of classified freight over the line of railroad of said complainant, from Indianapolis, Indiana, to the Indiana-Illinois State line.

V. The court erred in finding and decreeing that the rates established and in use by complainant company over its line of railroad, for the transportation of classified freight from Indianapolis, Indiana, to the Indiana-Illinois State line, at the time when said order of said Railroad Commission of Indiana, involved in said cause, was made and entered, were entirely reasonable, and that in handling the traffic covered thereby complainant only received sufficient compensation to cover the actual cost to it of handling and carrying such traffic over its said line, and that if complainant should be required to comply with the order aforesaid of said Railroad Commission, and collect only the rates therein specified, complainant would not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying such traffic over its said line of railroad.

89 VI. Because it appears from the record in this cause that complainant was not entitled to the final decree of injunction granted therein, and that such injunction should have been denied.

VII. Because the court erred in holding and decreeing that complainant was entitled to an injunction enjoining defendants in said cause, their successors in office and their representatives and others in like condition and situation, from enforcing the rates established and prescribed by the Railroad Commission of Indiana in its order dated December 14, 1906, effective February 1, 1907, for transporting classified freight over the line of railroad of complainant, from Indianapolis, Indiana, to the Indiana-Illinois State line, and from instituting and prosecuting any suit or suits against complainant for the recovery of damages, overcharges, penalty or penalties for and on account of the violation of said order of said Railroad Commission.

VIII. Because the court erred in overruling defendants' exception numbered four to the report of the special master as to his findings of facts, and conclusions of law in said cause, to the effect that said

report was erroneous in that the special master in determining the question of reasonableness or unreasonableness of said rates
90 established by the Railroad Commission took into consideration interstate business of complainant done on its line of railroad in the States of Indiana and Illinois, when the reasonableness of such rates should have been determined without reference to said interstate business, and with reference only to transportation of property wholly within the limits of the State of Indiana on its line of railroad from Indianapolis, Indiana, to the Indiana-Illinois State line and intermediate points.

IX. Because the court erred in overruling defendants' exception numbered six to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in finding that the expense of transporting classified freight over complainant's railroad, between Indianapolis, Indiana, and the Indiana-Illinois State line, for each of the years 1904, 1905 and 1906, respectively, to be as follows:

1904	$59,453.83
1905	66,506.64
1906	72,267.97

91 X. Because the court erred in overruling defendant's exception numbered ten to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in that said special master found that the class rates ordered by said Railroad Commission, if enforced, would reduce the earnings of complainant below its operating expenses, when complainant had failed to prove, or attempt to prove the cost of transporting said classified freight from which said earnings were produced.

XI. Because the court erred in overruling defendant's exception numbered eleven to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in that such special master adopted as the only practical method of ascertaining the expenses of the transportation of classified freight, which originated on complainant's line of railroad between Indianapolis, Indiana, and the Indiana-Illinois State line, and which terminated on the same line, for the years ending December 31, 1904, 1905 and 1906, respectively, an apportionment of them upon the ratio of all operating expenses to the whole earnings from every source upon the railroad between Indianap-
92 olis and the Indiana-Illinois State line during the year 1904 and upon the Indianapolis division, which extends from Indianapolis to the Illinois State line, during the year 1904, upon the St. Louis Division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expense being as follows:

1904	72.64%
1905	73.03%
1906	72.64%

for the reason that he took into consideration complainant's interstate business with its losses and profits, and such method leads to impossible, unjust and erroneous conclusions.

XII. Because the court erred in overruling the defendant's exception numbered twelve to the report of the special master, of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous on account of complainant's failure to either accurately or approximately prove the expense of handling the traffic in question, or to apportion the cost of handling it, or to submit facts upon which such cost could be apportioned, or from which the same could be reasonably estimated.

93 XIII. Because the court erred in overruling defendant's exception numbered thirteen to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in that it failed to show that complainant did not prove its allegations that it could not obtain revenue sufficient to reimburse it for its outlay in handling and carrying the classified traffic in question on the rates established by the order of said Railroad Commission; that said report showed that the witnesses of complainant could not give such cost either accurately or approximately, and that it appeared from the evidence that complainant had made no attempt or offer to ascertain the amount of such cost which said master reported produced in the year 1904, $79,803.80, in the year 1905, $91,067.56, and in the year 1906 $102,241.15.

XIV. Because the court erred in overruling defendants' exception numbered fourteen to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in that the special master ascertained the expense of producing the revenue from classified freight

94 for each year 1904, 1905 and 1906, respectively, which originated and ended on its railroad between Indianapolis, Indiana, and the Indiana-Illinois State line, both points inclusive, by assuming that the ratio of expense for producing said revenue was the same ratio of expense for producing revenue on complainant's entire business, on its line of railroad from Indianapolis, Indiana, to East St. Louis, Illinois, which said business included passenger, freight, mail and express done within the State of Illinois, as well as in Indiana, and included traffic destined to and coming from other states than the State of Indiana.

XV. Because the court erred in overruling defendants' exception numbered fifteen to the report of the special master of his special findings of facts and conclusions of law in said cause, to the effect that said report was erroneous, in that the special master in determining the question of the reasonableness or unreasonableness of the rates in question, applied the ratio of expense to earnings on complainant's entire business done within the State of Illinois, as well as in Indiana, to the purely local or domestic classified freight business done

95 within the State of Indiana, assuming that method was approved in the case of Smyth v. Ames, 169 U. S. 466, 461; 18 Sup. Ct. Rep. 418, when the method approved in said case was

the percentage of expense to earnings on all business, through and local, done by the railroad company within the state of Nebraska.

XVI. Because the court erred in overruling defendants' exception numbered sixteen to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous, because the method of computation adopted by said master was fallacious, and by such method classified rates five times higher than those in use by complainant company if reduced 34%, could be shown to produce less revenue than the cost of transportation or operating expenses, (estimated by said method) and therefore confiscatory.

XVII. Because the court erred in overruling defendants' exception numbered seventeen to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous, because the method of computation showed on its face that it was fallacious, and that rates five times higher than those in use for the class of freight in question
96 by complainant over its said railroad, under the same method of calculation, would show said rate confiscatory, applying in detail the method so used by the special master to the admitted facts appearing in evidence in said cause, and in said report of said special master.

XVIII. Because the court erred in overruling the defendants' exception numbered twenty-two to the report of the special master of his findings of facts and conclusions of law upon said cause, to the effect that said report was erroneous in finding that it cost $59,453.83 to produce $79,803.80, complainant's total revenue for classified freight originating and terminating on complainant's line of railroad from Indianapolis, Indiana to the Indiana-Illinois State line, both points inclusive, for the year ending December 31, 1904; that it cost $66,506.64 to produce from the same source $91,067.56 for the year ending December 31, 1905, and that it cost $72,262.97 to produce $102,241.15 from the same source for the year ending December 31, 1906.

XIX. Because the court erred in overruling the defendants' exception numbered twenty-three to the report of the special master of his findings of facts and conclusions of law in said cause, to
97 the effect that said report was erroneous in finding that to produce $52,223.12, the amount of the gross earnings that would have been realized for the year ending December 31, 1904, under the rates prescribed by the Railroad Commission from classified freight originating and terminating on the line of railroad of complainant between Indianapolis, Indiana, and the Indiana-Illinois State line, both points inclusive, would have been $59,453.83; that to produce from the same source, under the same rates, $60,079.13 for the year ending December 31, 1905, the expense would have been $66,506.64; that to produce from the same source, under the same rates, $66,936.99 for the year ending December 31, 1906, the expense would have been $72,267.97, a loss for each of said years respectively of $7,231.71, $6,427.51, and $7,230.28.

XX. Because the court erred in overruling the defendant's ex-

ception numbered twenty-four to the special master's report of his special findings of facts and conclusions of law in said cause, to the effect that the cost of billing and handling freight over the platform at Indianapolis, was estimated according to the tonnage of 1905 by witness for complainant, at 70.4 cents per ton, and in so finding the special master ignored the testimony of the local freight agent, who testified that there were 11,524 freight cars in and out of Indianapolis for the year 1905, instead of 12,852, the number adopted by
98 the master, and upon which said estimate of 70.4 cents per ton cost of billing and handling freight over the platform was based. That said special master also overlooked the fact that in said estimate of 70.4 cents per ton cost was included the entire office force expense at Indianapolis, when, according to the undisputed evidence, only twenty per cent of the service of such office force was required for the billing of said platform freight; that said 70.4 cents cost included a charge for office force of $16,709.90 for said year 1905, whereas it should only have included twenty per cent of that sum; that the charge per ton for office force for said year, including the said estimate, was 28.4 cents for office expense, when it should have been only 5.6 cents.

XXI. Because the court erred in overruling defendants' exception number 25 to the report of the special master of his findings of facts and conclusions of law in said cause, to the effect that said report was erroneous in finding that there had not been any evidence introduced by the defendants which discredits the evidence introduced by complainant.

That witness, Buchanan, produced on behalf of complainant, on cross-examination gave the weight of and revenue from each
99 class of classified freight originating and terminating on complainant's line of road between Indianapolis and the Indiana-Illinois State line for the years 1904, 1905 and 1906, as well as the revenue derived therefrom;

That by ascertaining the weight per cwt. an accurate estimate of the length of haul can be determined; that the rev-nue per ton, revenue per ton per mile, and average number of miles each ton was hauled, of the tonnage affected by the order of the Railroad Commission, based upon the rates now in effect, as well as upon the rates ordered put in effect by the Commission, can be ascertained from the record;

That for the year 1905, the only year for which complainant offered evidence covering the details of their general business, the master was enabled to make comparisons of the average revenue per ton, average number of miles each ton was hauled, revenue per ton per mile, and ratio of expense to earnings between complainant's general business and complainant's business between Indianapolis and the Indiana-Illinois State line affected by the order of the Commission, as per the following table:

100

1904.	Average revenue per ton.	Average miles each ton was hauled.	Revenue per ton per mile.	Expense per ton per mile.	Ratio of expenses to earnings.
From complainant's rates on business out of Indianapolis.	$2.98	35	$.0841		
From complainant's rates on all stations.....	2.33	29	.0793		
From Commission's rates on business out of Indianapolis.	1.92	35	.0542		
From Commission's rates on all stations.....	1.52	29	.0519		
1905.					
From complainant's rates on business out of Indianapolis.	3.00	39	.0764		
From complainant's rates on all stations.....	2.34	29	.0785	.0067	24.79
From Commission's rates on business out of Indianapolis.	1.95	39	.0496		
From Commission's rates on all stations.....	1.54	29	.0517	.0067	
On general business.....	.652	88	.0074	.0059	73.03
1906.					
From complainant's rates on business out of Indianapolis.	2.91	36.9	.0787		
From complainant's rates on all stations.....	2.25	29.08	.0754		
From Commission's rates on business out of Indianapolis.	1.84	36.9	.0499		
From Commission's rates on all stations	1.47	29 8	.0493		

101 That the expense for handling local freight might have been ascertained from the testimony of witness Downing, produced by complainant, to the effect that if all of the business of complainant had been handled on the basis of the increased expense of local freight, the expense would have been 14.6% greater; that the expense for handling local freight might have been ascertained by adding 14.6% to the 73.03% which the evidence showed to be the ratio of expense to earnings of their general business in 1905; that by taking 87.63% of the revenue for the year as showing what the expense would have been if all of the business had been handled on the basis of local freight, which witness Downing testified he understood to be freight handled over the platform by local freight trains, and by multiplying the 7,174,250 tons carried, by the average revenue per ton derived from local business, as testified by witness Buchanan, $2.34, and dividing this result into the expense ascertained by taking 87.63% of the earnings of $4,750,811.13, the ratio of expense to earnings of classified freight would have been 24.79%;

That the evidence showed that there was in effect at the time of the taking of the evidence before the master, and at the time the order in question was made, on the St. Louis Division of the complainant's railroad, class rates that were for a distance not to exceed thirty miles, from 40% to 160% higher for the different

102 classes than the rates on complainant's Vincennes Division of its railroad;

That for forty mile distances on said respective divisions the rates *the rates* on said St. Louis Division exceed those for said Vincennes Division from 33⅓% to 130%;

That for fifty mile distances on the respective divisions the rates on said St. Louis Division exceed those on said Vincennes Division 23% to 85% for the different classes;

That for sixty mile distances on said respective divisions, the rates on said St. Louis Division exceed those on said Vincennes Division 14% to 60% for the different classes;

That for seventy mile distances on said respective divisions, the rates on said St. Louis Division exceed those on said Vincennes Division 14% to 39% for the different classes;

That the burden of proof was on complainant, whose duty it was to show, if they could, why so much higher rates were necessary to be charged on said St. Louis Division than on said Vincennes Division of complainant's railroad, for the same service for the same distance;

That it was also in evidence that other lines of railroads in Indiana charged very much lower rates than complainant;

103 That all the comparisons of rates in evidence referred to herein are with those in effect on other railroads wholly within this state;

The unusual advances in class rates for distances between stations, between Indianapolis and the Indiana-Illinois State line, prove complainant's rates to be unjust and unreasonable; for instance a charge of 2¢ for 3 miles; a charge of 3¢ for three miles; a charge of 3¢ for 5 miles; a charge of 2¢ for 8 miles; a charge of 2¢ for 12 miles; a charge of 2½¢ for 17 miles, and a charge of ½¢ for 22 miles, these advances for the various distances being for the same class of freight, i. e., first, for increasing distances and an examination of the scale of rates shows that complainant carries sixth class freight 35 miles without change of rate, with other vagaries in the scale too numerous to mention;

That the revenue received by complainant on traffic from New York to Terre Haute and from Chicago to Greencastle is greatly inferior to that it would receive from traffic within the State of Indiana on complainant's road, if it would put in effect the rates prescribed by the Commission, the latter yielding a revenue that exceeds the shares of the rate from New York or from Chicago received by complainant from 60% to 100% for handling the same classes of freight.

104 Wherefore defendants pray that the judgment of the Circuit Court may be reversed.

JAMES BINGHAM,
Attorney General, Solicitor for Defendants.

And thereupon it is ordered by the Court that said appeal be and the same is hereby allowed, and said appellants are required to file an appeal bond herein in the sum of five hundred dollars ($500.00). And said appellants now file their appeal bond in the sum of five hundred dollars ($500.00), which bond is approved by the Court, and is in the words following, to-wit:

United States Supreme Court.

No. 10663.

VANDALIA RAILROAD COMPANY, Complainant,
vs.
UNION B. HUNT et al., Defendants.

Know all men by these presents, That we, William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin and George G. Griffin, are held and firmly bound unto the above named Vandalia Railroad Company in the sum of five hundred dollars ($500.00), to be paid to said Vandalia Railroad Company to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors and administrators, jointly by these presents.

Sealed with our seals and dated this 20th day of May, 1910.

WILLIAM J. WOOD.
JOHN F. McCLURE.
FRANK E. PAYNE.
GUSTAV A. SCHNULL.
WILLIAM J. GRIFFIN.
GEORGE G. GRIFFIN.

Whereas, the above named William J. Wood, John F. McClure, Frank E. Payne, Gustav A. Schnull, William J. Griffin and George G. Griffin *hath* prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above en-
105 titled suit, by the Circuit Court of the United States for the District of Indiana;

Now, therefore, the condition of this obligation is, that if the above named William J. Wood, et al., shall prosecute their appeal to effect and answer all costs and damages that may be adjudged or awarded against *him* if *he* shall fail to make good *his* plea, then this obligation to be void; otherwise in full force.

WILLIAM J. WOOD.
JOHN F. McCLURE.
FRANK E. PAYNE.
GUSTAV A. SCHNULL.
WILLIAM J. GRIFFIN.
GEORGE G. GRIFFIN.

Sealed and delivered in presence of

____ ____.
____ ____.

Taken and approved by me this 20th day of May, 1910.

ALBERT B. ANDERSON.

105½ And afterwards, towit, at the May Term of said Court, on the 18th day of June, 1910, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the defendant- by counsel and upon motion it is ordered that the time for filing the transcript in the above entitled cause in the Supreme Court of the United States be and the same is hereby extended ten days.

106 In the Circuit Court of the United States for the District of Indiana.

No. 10663. Chancery.

VANDALIA RAILROAD COMPANY, Complainant,
vs.
UNION B. HUNT, WILLIAM J. WOOD, CHARLES V. MCADAMS, JAMES Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George C. Griffin, Defendants.

Before Hon. Noble C. Butler, Special Master in Chancery.

Transcript of Evidence.

Appearances:

For Complainant: Messrs. John G. Williams, S. O. Pickens and D. P. Williams.

For Defendants: Hon. James Bingham, Attorney General, Mr. E. M. White, Assistant Attorney General, and Mr. Bernard Korbly.

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Exhibit 4—Central Freight Association's Scale of Minimum Class Rates 287½

107 TUESDAY, *September* 9, 1908.

The parties met before the Special Master in Room 219 Federal Building, Indianapolis, Indiana, present Mr. John G. Williams, Solicitor for complainant, and Messrs. E. M. White, Assistant Attorney General of Indiana, and Bernard Korbly, Solicitors for the defendants.

Complainant's Evidence.

Opening Statement by Mr. Williams, Solicitor for the Complainant.

Mr. WILLIAMS: By an order effective February 1, 1907, the Railroad Commission of Indiana established certain rates on a portion of the line of complainant, the Vandalia Railroad Company, being that part of the line extending from Indianapolis here, through Greencastle and Terre Haute to the Illinois state line. The order applied only to the six class rates,—that is, the rates that were applicable to traffic moving under all of the six classes.

The Vandalia Railroad Company brought this bill to set aside that order of the Commission, claiming that it was confiscatory, or would be, in its effect, in that the revenue derived under the rates as fixed by the Commission on these six classes would not equal
108 the cost of operation,—of handling the traffic. They would *lost* money, in other words, in handling the traffic on these rates as fixed by the Commission. That is the general averment of the bill, as you may have noticed, if you have read it, without entering into any detail; but we base our action and the jurisdiction of this court upon the protection of the Fourteenth Amendment,—the taking of property without due process of law.

An outline of the details by which I expect to establish the proposition generally stated in the bill is by showing to your Honor what our revenue was on these classes affected by the order of the Commission for the years 1904, 1905 and 1906, the three years immediately preceding the order of the commission. I expect to show what our operating expenses were; to show the cost of earning that money each one of those years on that traffic. I expect to show what the revenue on that traffic would have been had the rates of the Commission been applied at the time the traffic was moved, instead of the rates that were applied, and I think your Honor will see that in

as much as the cost of moving the traffic remained constant, the revenue derived under the Commission rate would have been less than our operating expenses,—the expense of operating that traffic when it was actually handled. There would be a loss. And in that respect I think the case will be clearly established, and
109 briefly,—within a narrow compass.

There has been suggested,—not in the opinion, nor in the hearing that we have had before the Commission, but in another matter,—that this order of the Commission did not affect anything but the class rates west bound out of Indianapolis. The suggestion was—there was never a serious contention—but the suggestion was that we didn't have a thing to do under the order of that Commission except to change our rates from Indianauolis to each station west to the Illinois line. That would leave all our west bound rates intact except from Indianapolis; the west bound rates from every station on the Vandalia west of Indianapolis,—Amo, Clayton, Terre Haute, Brazil—would all remain intact under that order of the Commission. In addition, every rate we had east bound under this order of the Commission would remain intact, and not be affected at all by the order of the Commission. For reasons which will be developed, when your attention is called to the order of the Commission, I don't think that construction of the order is possible. I think it affected every rate east bound and west bound between here and the Illinois state line. But in the figures I have prepared I will show the revenue that would have been earned under the Commission rates as well as the revenue that would have been earned
110 under the company's rates, meeting that construction of the order which I do not think is at all justified.

The complainant is a consolidated corporation which went into existence as such on the first day of January, 1905. There were five corporations engaged in the consolidation agreement that was executed. One of them was the Terre Haute and Indianapolis Railroad Company which owned the line from Indianapolis through Terre Haute to the Illinois state line, and that, as your Honor will understand, is the only line affected by the order of the Commission and the only one involved in this case. Under the consolidation that line went into the consolidated company, and since the first day of January, 1905 it has been operated by the consolidated company as it operated all the other lines that went into it,—as an entirety.

In the year 1904, which preceded the consolidation, the property that year was operated by its owner, the Terre Haute and Indianapolis Railroad Company, and the accounts were all kept for that line alone by its owner. Its owner, the Terre Haute and Indianapolis Railroad Company, for some time previous to that, had been operating under leases and otherwise other property, but their accounts were entirely separate. The account in 1904 to which your attention will be directed related exclusively to this line between In-
111 dianapolis and the Illinois state line. Since 1905 I will not be able to produce as many statistics in detail as I would for the year 1904 for the reason that our accounts in the consolidated

company were kept differently from what they were before the consolidation was formed; but they are in such condition that I will be able to show you all that I think may be necessary. For instance, since the consolidation our accounts are kept so that we can tell what each division, operating division, does in the way of earnings and expenses; and there are four divisions, one of them a leased line, which is kept still separately, but which is not involved here. There are three divisions which now make up the lines which enter into and comprise the St. Louis Division, extending from here to East St. Louis, and embracing the old line between here and the Illinois state line which is involved, and I will be able to furnish you the earnings and operating expenses of that division for 1905 and 1906. But you will appreciate that that statement will include the line west of the Illinois state line, as well as the line east, and so will not be as specific and strictly in detail as to this particular line as it will be for 1904.

The answer admits the consolidation; admits ownership and operation; admits the averments of the bill generally I may say except the facts alleged as to the confiscatory character of these rates, and they are denied specifically.

112 So that, I think, the issue will be confined to that simple question, and I will not encumber the record with anything more than I can help, except what may be in the way of preliminary proof so that your honor will understand the application of these figures when they are testified to by the witnesses.

The MASTER: Do you wish to make any statement, Mr. Korbly?

Mr. KORBLY: I don't think we care to make any statement. I don't think anything is to be said at this time. We would prefer to make our statement afterwards. (Addressing Mr. Williams) If you would have no objections I would much prefer to make a statement after you have introduced your testimony.

Mr. WILLIAMS: It is wholly immaterial to me.

113 W. S. RONEY, a witness called on behalf of complainant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. JOHN G. WILLIAMS:

Q. State your name?
A. W. S. Roney.
Q. Where do you live Mr. Roney?
A. Terre Haute, Indiana.
Q. What is your business?
A. Auditor of the Vandalia Railroad Company.
Q. How long have you been engaged in an official capacity with that railroad company, and its predecessor, the Terre Haute and Indianapolis Railroad Company?
A. About 32 years.
Q. You became Auditor of the Terre Haute and Indianapolis Company then in 1876?
A. Yes sir.

Q. And you have filled that position continuously ever since?
A. Yes sir.
Q. What are the duties of your position in general, Mr. Roney? What is committed to your charge?
A. All reports from the road that are received from agents; all detail of expenses and vouchers.
Q. You keep the accounts, in other words?
114 A. I keep the accounts, yes sir, of course.
Q. State when this consolidated company, the complainant in this case, began to operate? When the consolidation became effective?
A. In 1905.
Q. What date?
A. In July, I think.
Q. No, it was the first day of January.
A. Yes sir, first day of January.
Q. January 1, 1905. Prior to that time how were the accounts of the Terre Haute and Indianapolis Railroad Company kept with reference to having any accounts of other companies mingled with it?
A. They were kept separate.
Q. And had been through all the years you have been connected with it?
A. It had been through all prior years.
Q. What line of road was owned by that Terre Haute and Indianapolis Railroad Company at the time of the consolidation?
A. From Indianapolis to the State line.
Q. Illinois State line?
A. Illinois State Line.
Q. And the accounts that you kept of the earnings and expenses of the Terre Haute and Indianapolis Railroad Company
115 dealt exclusively with that line?
A. They did.
Q. Now when the consolidation took effect what lines in addition to the Terre Haute and Indianapolis Railroad Company went into the consolidated company?
A. The Terre Haute and Indianapolis Railroad Company.
Q. In addition to that?
A. The St. Louis, Vandalia and Terre Haute Railroad Company.
Q. Where did that line extend to?
A. That extended from the state line to E. St. Louis.
Q. What other lines?
A. Terre Haute and Logansport Railway Company.
Q. Where did that go?
A. Extending from Terre Haute to Logansport and South Bend.
Q. What did you say?
A. And South Bend.
Q. And another?
A. And the Logansport and Toledo, extending from Logansport to Butler.
Q. And what else?

A. And the Indianapolis and Vincennes, extending from Indianapolis to Vincennes.

Q. Those were all the companies, whose property went into the consolidation?

116 A. Yes sir.

Q. Now after the consolidation, did you keep the accounts of the earnings and expenses of the road between here and the Illinois state line separate?

A. No.

Q. What was done with reference to dividing the consolidated property into operating divisions?

A. I don't know as I understand exactly your question.

Q. Well, for instance, what is the line from East St. Louis now called, as a division?

A. St. Louis Division.

Q. What is another division?

A. The Michigan Division, running north, including the Terre Haute and Logansport, from Logansport to Terre Haute, and the Vincennes Division running from Indianapolis to Vincennes; and also the Terre Haute and Peoria is kept separate.

Q. That was a leased line?

A. That was a leased line.

Q. In which no change was made in the method of keeping its accounts?

A. No sir.

Q. Now in the method of keeping your accounts, do you keep them so that you can tell the earnings and expenses of each one of those divisions that you have mentioned?

A. Yes sir.

117 Q. But your consolidated statement for the end of the year, showing all of the earnings and all of the expenses of the company would not be divided as to these divisions?

A. It would not.

Q. It would be in the aggregate?

A. It would be in the aggregate.

Q. But for the St. Louis Division you can give us the earnings, can you, of that division, for the years 1905 and 1906?

A. Yes sir.

Q. And the earnings and expenses specifically of the line between here and Illinois for the year 1904?

A. Yes sir.

Q. Now, in keeping your accounts, Mr. Roney, would your books, as they were finally made up, show what revenue was derived from traffic moving on this line wholly within the state of Indiana, and from traffic on that line which moved partly within this state and partly without?

A. No sir.

Q. That information came to your office, I presume?

A. Yes.

Q. And could be ascertained how?

A. Well, by a detailed examination of the accounts.

Q. Well, those accounts would be composed of what?

A. In part it would be composed of the waybills that would
118 be received from the different agents.

Q. When freight would be shipped from any station, the agent would issue a way-bill showing its weight, freight charges and destination?

A. Yes sir, that is right.

Q. And one copy of that waybill would be sent to your office?

A. Yes sir.

Q. And from that is made up the earnings on freight?

A. Yes.

Q. But in the aggregate you do not separate on your books the revenue as between intrastate and interstate traffic?

A. No sir.

Q. So what did it become necessary to do to find out after the lapse of the year what was the revenue derived on this freight?

A. The company directed me to make a special examination of these waybills.

Q. Did you have that done for the years 1904, 1905 and 1906?

A. Yes sir.

Q. Who had charge of that examination?

A. Mr. Buchanan, my clerk.

Q. Employed in your office, is he?

A. He is employed in my office.

Q. Now so far as expenses are concerned for the year 1904, as I understand, you can give us the actual expenses made for
119 operating the road between here and the Illinois line for that year?

A. Yes sir.

Q. On account of the accounts having been kept separately for that year?

A. Yes sir.

Q. Now for 1905, what can you give us in the way of operating expenses for that line between here and the Illinois state line?

A. It would be given as a part of the St. Louis Division?

Q. But you can give us the operating expenses of that entire division for that year?

A. Yes sir.

Q. And the same may be said also of 1906?

A. Yes sir.

Q. Under what head have the accounts of earnings been kept, Mr. Roney; under what general head?

A. Freight, passenger, mail, express, and miscellaneous; the general heads have been the same.

Q. Now, so far as earnings from freight traffic are concerned, as you have kept the accounts, you show exactly the revenue derived from freight, don't you?

A. Yes sir.

Q. When you come to expense, under what general heads have

your expenses, operating expenses, been kept during the
120 years I have mentioned 1904, 1905 and 1906?

A. Maintenance of Way and Structures; Maintenance of Equipment; Conducting Transportation; General Expenses; and Taxes come in there.

Q. Now, in stating the expenses of operation, do you make any division of the expenses between freight and passenger business, allotting certain things to freight business of expenses, and other things of expense to passenger business?

A. In the division of the expenses, there are certain things which are divided actually, that is, actually shown as passenger and actually shown as freight; but in the general result it is not shown as so much passenger or freight.

Q. Well, have you any means of stating from your books, exactly what the cost of the freight service was?

A. No; at the end of the year, there would now; and in the division of the expenses as between passenger and freight for 1904 and prior years, a little complicated; I could explain it, if you wish.

Q. Well, since that time what is done?

A. Since that time we have a method by which we divided the expenses as between passenger and freight, which is as nearly accurate as can be obtained.

Q. Now, take the outlays that were made on account of Maintenance of Way and Structures? That meant the keeping up of the roadbed and its buildings, didn't it?

121 A. Yes sir.

Q. Now, how would you divide those expenses? How did you divide those expenses in 1904 between freight and passenger service?

A. It is divided on the mileage of trains.

Q. Both classes of services used the tracks and buildings? Don't they?

A. Yes sir.

Q. And you would take all those expenses for Maintenance of Way and Structures which could not be allot-ed separately to either service, the proportion which the freight train mileage bore to the whole mileage of the trains that year?

A. Yes sir.

Q. That was in 1904?

A. Yes sir.

Q. How have you done it since, in 1905 and '6?

A. In 1905 the same basis was used. In 1906 we had a special method by which the actual,—based upon the actual just as far as possible. It is made up by the superintendents and the Engineer of Maintenance of Way, whose duty it is to report that, and the balance of undivided expenses is divided on the same basis of train revenue, passenger mileage.

Q. In other words, wherever you can specifically show that the expenditure has been made for the benefit of the freight serv-
122 ice, the freight service is charged with that?

A. That is right.

Q. But when you have exhausted that method of charging, there still remains a large amount undistributed?

A. Yes sir.

Q. And that you divide between freight and passenger in the ratio of freight train mileage and passenger train mileage to the whole mileage?

A. That is right.

Q. Now take Maintenance of Equipment. That is more easy of division, isn't it?

A. Yes sir.

Q. What do you do with regard to that?

A. In 1904?

Q. Yes.

A. In 1904, the Maintenance of Equipment—and in prior years—the Maintenance of Equipment expenses were largely the repairs to passenger cars, repairs to freight cars, repairs of engines, passenger and freight, and that made the bulk of the whole account, so that the most of that was divided plainly between passenger and freight.

Q. And whatever might be undistributed, how was that divided?

A. That was on the same proportion of percentage.

Q. The same proportion?

A. Yes sir, the same proportion of percentage as the other.

Q. According to mileage?

123 A. Yes sir

Q. Now, in 1905 and 1906, what was done?

A. In 1905, it was the same way. In 1906, it is, as I say, the actual, just as far as it can be obtained, and which we are endeavoring to obtain very accurately.

Q. Now, under the general head of Conducting Transportation, what rule did you apply there as to charging freight and passenger service?

A. In our regular statements we have quite a separation as between the passenger service and freight service. There is the superintendence,—passenger, and superintendence—freight, and so forth. A great part of that is divided as between passenger and freight actually.

Q. And the undistributed part?

A. On the basis of the train mileage.

Q. And that rule has prevailed during the years we have mentioned as to Maintenance of Way and Structures and Maintenance of Equipment?

A. Yes.

Q. Now General Expenses, outlays under that head, how were they divided between freight and passenger?

A. In 1904, the totals of the three accounts were added together, and the percentage obtained as between themselves, we used as the percentage for the General Expenses and the Taxes.

Q. How has it been since?

124 A. The same basis of division in 1906 and '07 is being used in relation to the division,—or between the divisions of the general superintendence, for instance; that is, the Vice-President

has control of a certain department, that department is charged, whether freight or passenger, with the proportion. We endeavored to obtain it more accurately in 1906 and subsequent years on that basis.

Q. Well, I understand that you localize in that account as much as you can?

A. Yes sir.

Q. And those items you can't localize, how have you been dividing them and redistributing them?

A. On the same basis of the freight and passenger mileage.

Q. Freight and passenger train mileage?

A. Train mileage, yes sir.

Q. How do you distribute Taxes, Mr. Roney, as between the freight and passenger service?

A. The Taxes in 1904 were distributed in the same way. There is no distribution of taxes in later years between the passenger and freight.

Q. You could not possibly localize them to any extent?

A. No.

Q. In 1904, Mr. Roney, when did that fiscal year end? Was it co-incident with the calendar year?

A. October 31st, was the end of the fiscal year.

125 Q. And since the consolidation, would the fiscal year correspond with the calendar year?

A. Yes sir, December 31st.

Q. Now, in 1904, for the fiscal year ending October 31st, 1904, what was the ratio of operating expenses to earnings of the line between here and the Illinois State line, the accounts that year having been kept separately?

A. 76.4 per cent.

Q. That means, does it not, that for every dollar earned, you spend seventy-six cents and four-hundredths of a cent to earn it?

A. Yes.

Q. Now, for the two months, ending December 31, 1904, being the two months immediately preceding the consolidation, what was the ratio of operating expenses to earnings for that line for those two months?

A. 74.5 per cent.

Q. Now, each of those per centages that you have given, Mr. Roney, are based, are they not, upon the total earnings from all sources, and the total items of expenses charged as operating expenses?

A. Yes.

Q. There has been no calculation made, or no means possible, to ascertain the actual relation of operating expenses in the freight service to revenue derived from freight service?

A. No sir.

126 Q. For the reasons you have already given?

A. That is right.

Q. Now, in 1905, have you a statement showing the earnings and operating expenses of the St. Louis Division?

A. Yes sir.

Q. What were the earnings of that division that year?
A. $4,750,811.13.
Q. And what were the operating expenses of that division?
A. $3,469,544.81.
Q. And that, as I understand, embraces the line between here and St. Louis?
A. Yes sir.
Q. Being made up of the old Terre Haute and Indianapolis Railroad and the St. Louis, Vandalia and Terre Haute Railroad?
A. Yes sir.
Q. What was the ratio of operating expenses to earnings on that division?
A. 73.03 per cent.
Q. That is for the year 1905?
A. 1905.
Q. Now, that statement that you have there, shows the various items that are embraced in operating expenses, does it?
A. It does.
Q. And all that refers to operating expenses?
A. Yes sir.

127 Q. How do those items compare with the items that embrace the operating expenses of 1904? Do they vary substantially in any way?
A. They are the same.

Mr. WILLIAMS: For the information of the Master, I would like to have that statement for 1905 handed to the Stenographer and made a part of Mr. Roney's evidence.

The Statement referred to by counsel was marked by the Reporter Exhibit No. 1, and the same is hereto attached as follows, to-wit:

127a

No. 1.

Vandalia Railroad Company.

Statement of Earnings and Expenses. Distribution of Account of Expenses.

Maintenance of Way and Structures.

12 Months, 1905.

1	Engineering and Superintendence	$24,254.28
2	Track Maintenance	82,815.28
3	Applying Track Material	40,110.28
4	Roadway Cleaning and Policing	65,777.47
5	Ballast	11,786.87
6	Rails	37,135.20
7	Ties	92,281.43
8	Track Appliances	31,541.54
9	Roadway Tools	4,173.21
10	Other Roadway Maintenance	6,545.25

11	Bridges and Culverts	10,720.66
12	Buildings and Grounds	53,676.36
13	Docks and Wharves	.....
14	Interlocking Plants and Signals	9,149.36
15	Fences, Road Crossings and Signs	21,402.33
16	Telegraph and Telephone Lines	3,774.27
17	Electric Traction Lines	.....
18	Stationery and Printing	1,836.43
19	Insurance	75.50
20	Incidentals	.....
	Total	497,055.72

127*b* Maintenance of Equipment.

12 Months, 1905.

21	Superintendence	$16,592.03
22	Locomotives, Repairs of—Passenger	95,488.26
22	" " —Freight	182,238.79
23	Cars Repairs of—Passenger	121,536.72
24	" " —Freight	305,278.23
25	" " —Work	6,313.62
26	Floating Equipment—Repairs of	.....
27	Tools and Machinery—Repairs of	17,141.44
28	Shops—Heating and Lighting	6,367.77
29	Watchman	1,382.16
30	Stationery and Printing	4,847.23
31	Insurance	1,374.92
32	Incidentals	1,070.62
	Total	759,631.79

Conducting Transportation—Traffic.

12 Months, 1905.

33	Superintendence—Passenger	$15,757.12
34	Foreign Agencies—Passenger	29,005.24
35	Advertising—Passenger	7,826.75
36	Stationery and Printing—Passenger	8,237.67
37	Superintendence—Freight	21,515.82
38	Foreign Agencies—Freight	53,444.94
39	Advertising—Freight	166.00
40	Stationery and Printing—Freight	6,498.18
	Total	142,451.72

127*c* Conducting Transportation—Operation.

12 Months, 1905.

41	Superintendence—Transportation	$39,256.54
42	Station Service—Passenger	29,691.04
43	" " —Freight	173,118.92
44	Station Supplies	13,028.59
45	Stock Yards and Elevators—Operation of	.....
46	Yard Supervision	47,216.91
47	Yardmen	102,225.66
48	Yard Enginemen and Firemen	61,630.71
49	Yard Locomotives—Fuel for	76,100.38
50	Road Enginemen and Firemen—Passenger	80,418.72
51	Trainmen—Passenger	73,955.88
52	Road Locomotives—Fuel for Passenger	87,987.49
53	Train Supplies—Passenger	61,227.09
54	Road Enginemen and Firemen—Freight	97,874.85
55	Trainmen—Freight	114,789.48
56	Road Locomotives—Fuel for Freight	125,327.37
57	Train Supplies—Freight	13,330.06
58	Engine Housemen	73,114.77
59	Fuel Stations—Operation of	26,623.30
60	Locomotives—Water supply for	21,534.92
61	" —Stores for	11,760.42
62	" —Other Supplies for	13,281.63
63	Telegraph and Telephone—Operation of	103,350.07
64	Signalmen	25,198.32
65	Highway Crossing Watchmen	18,986.61
66	Policemen	13,399.82
67	Signal Supplies	3,343.35
68	Highway Crossing Supplies	887.17
69	Wrecks—Clearing	8,096.46

127*d*

70	Car Service	$18,800.53
71	Hire of Equipment	5,411.27
72	Rent of Tracks, Yards and Terminals	217,004.57
73	Rent of Buildings and Other Property	4,844.03
74	Floating Equipment—Operation of	.....
75	" " —Fuel for	.....
76	.....	.....
77	Switching Charges	1,281.35
78	.....	.....
79	Electric Traction—Power Plants—Operation of	.....
80	Injuries to persons	9,557.93
81	Loss and Damage	13,879.89
82	Stationery and Printing—Transportation	25,544.04
83	Insurance	11.80
84	Incidentals	10,412.09
	Total	1,823,504.03
	Grand Total	1,965,955.75

General Expenses.

12 Months, 1905.

85	General Officers	$16,236.64
86	Clerks	42,274.26
87	Attendants	485.58
88	Heat and Light	285.27
89	Office Expenses and Supplies	7,896.52
90	Relief Department—Expenses	4,089.44
91	Law Expenses	21,046.32
92	Stationery and Printing	12,039.57
93	Incidentals	1,496.96
	East Financial Agencies	2,918.02
	Total	108,768.58

127e

Recapitulation.

12 Months, 1905.

Maintenance of Way and Structures	$497,055.72
Maintenance of Equipment	759,631.79
Conducting Transportation	1,965,955.75
General Expenses	108,768.58
Taxes	138,132.97
Total	3,469,544.81

Earnings.

12 Months, 1905.

Merchandise Freight		$2,348,250.58
Coal	"	476,802.43
Coke	"	29,998.86
Stone	"	.....
Passenger		1,185,069.75
Passenger, Miscellaneous		63,640.20
Express		126,685.24
Mails		466,918.06
Rents		12,055.87
Rent of Railway		8,400.00
Miscellaneous		33,430.11
Total		4,750,811.13

Deduct 30 per cent. for rentals:

Operating expenses	3,469,544.81
Profit	1,281,266.32
Loss	.....

Per Cent. 73.03.

128 Q. Have you a similar statement for the year ending December 31st, 1906, of the earnings and expenses of the St. Louis Division?

A. Yes sir.

Q. What was the ratio of operating expenses that year?

A. 72.64 per cent.

Q. Will you please hand that statement for 1906 to the Reporter and make it a part of your evidence as an exhibit?

A. I will.

The statement for 1906 was marked by the Reporter Exhibit No. 2, and the same is hereto attached as follows, to-wit;

128*a* No. 2.

Vandalia Railroad Company.

Statement of Earnings and Expenses. Distribution of Account of Expenses.

Maintenance of Way and Structures.

12 Months, 1906.

1	Engineering and Superintendence	$30,355.63
2	Track Maintenance	121,958.22
3	Applying Track Material	58,291.45
4	Roadway Cleaning and Policing	71,633.17
5	Ballast	13,886.70
6	Rails	38,721.56
7	Ties	96,859.26
8	Track Appliances	42,440.96
9	Roadway Tools	5,794.15
10	Other Roadway Maintenance	15,455.35
11	Bridges and Culverts	12,159.53
12	Buildings and Grounds	50,112.05
13	Docks and Wharves	.....
14	Interlocking Plants and Signals	14,571.14
15	Fences, Road Crossings and Signs	17,300.92
16	Telegraph and Telephone Lines	6,046.89
17	Electric Traction Lines	.....
18	Stationery and Printing	2,392.77
19	Insurance	1,821.27
20	Incidentals ....Cr.	14.56
	Total	599,766.46

128*b* Maintenance of Equipment.

21	Superintendence	$21,316.43
22	Locomotives, Repairs of—Passenger	195,659.95
22	" " —Freight	194,565.20

23	Cars, Repairs of—Passenger	121,565.75
24	" " —Freight	405,299.64
25	" " —Work	39,279.46
26	Floating Equipment—Repairs of	.....
27	Tools and Machinery—Repairs of	16,081.46
28	Shops—Heating and Lighting	6,628.86
29	Watchmen	1,643.81
30	Stationery and Printing	3,341.13
31	Insurance	3,157.51
32	Incidentals	1,119.00
	Int. on deferred pay't a/c 411 frt. cars	17,056.80
	Total	1,026,715.00

Conducting Transportation—Traffic.

12 Months, 1906.

33	Superintendence—Passenger	15,930.60
34	Foreign Agencies—Passenger	29,804.48
35	Advertising—Passenger	11,863.12
36	Stationery and Printing—Passenger	9,321.62
37	Superintendence—Freight	24,060.02
38	Foreign Agencies—Freight	49,058.25
39	Advertising—Freight	159.16
40	Stationery and Printing—Freight	7,017.16
	Total	147,214.41

128c Conducting Transportation—Operation.

12 Months, 1906.

41	Superintendence—Transportation	41,509.72
42	Station Service—Passenger	50,788.06
43	" " —Freight	179,472.27
44	Station Supplies	14,228.59
45	Stock Yards and Elevators—Operation of	.....
46	Yard Supervision	49,564.90
47	Yardmen	117,275.12
48	Yard Enginemen and Firemen	71,046.97
49	Yard Locomotives—Fuel for	82,897.41
50	Road Enginemen and Firemen—Passenger	91,955.24
51	Trainmen—Passenger	81,263.48
52	Road Locomotives—Fuel for Passenger	96,675.91
53	Train Supplies—Passenger	56,333.00
54	Road Enginemen and Firemen—Freight	114,043.26
55	Trainmen—Freight	132,626.57
56	Road Locomotives—Fuel for freight	153,136.77
57	Train Supplies—Freight	26,820.68
58	Engine Housemen	78,812.68

59	Fuel Stations—Operation of	37,995.64
60	Locomotives—Water Supply for	28,330.33
61	" —Stores for	13,905.38
62	" —Other Supplies for	13,253.41
63	Telegraph and Telephone—Operation of	101.760.21
64	Signalmen	27,316.34
65	Highway Crossing Watchmen	20,701.59
66	Policemen	13,808.90
67	Signal Supplies	3,438.42
68	Highway Crossing Supplies	1,876.76
	69 Wrecks—Clearing	15,501.65
128*d*	70 Car Service	12,863.38
	71 Hire of Equipment	8,065.24
72	Rent of Track, Yard and Terminals	.....
73	Rent of Buildings and other Property	.....
74	Floating Equipment—Operation of	.....
75	" " —Fuel for	.....
76		126,735.14
77	Switching Charges	.....
78		.....
79	Electric Traction—Power Plants—Operation of	.....
80	Injuries to persons	17,071.40
81	Loss and Damage	31,654.92
82	Stationery and Printing—Transportation	26,744.70
83	Insurance	352.32
84	Incidentals	5,639.90
	Total	1,945,466 26
	Grand Total	2,092,680.67

General Expenses.

12 Months, 1906.

85	General Officers	16,753.82
86	Clerks	45,268.00
87	Attendants	894.73
88	Heat and Light	125.64
89	Office Expenses and Supplies	7,669.15
90	Relief Department—Expenses	5,595.04
91	Law Expenses	14,577.49
92	Stationery and Printing	7,896.69
93	Incidentals	532.98
	East Financial Agencies	1,667.08
	Total	100,980.62

128e Recapitulation.

12 Months, 1906.

Maintenance of Way and Structures	599,766.46
Maintenance of Equipment	1,026,715.00
Conducting Transportation	2,092,680.67
General Expenses	100,980.62
Taxes	160,764.15
Total	3,980,906.90

Earnings.

Merchandise Freight	2,736,419.95
Coal "	556,407.49
Coke "	73,861.69
Stone "	.....
Passenger	1,419,150.84
Passenger Miscellaneous	70,598.56
Express	133,840.79
Mails	467,193.61
Rents	.....
Rent of Railway	.....
Miscellaneous	22,621.84
Total	5,480,094.77

Deduct 30 per cent for rentals.

Operating expenses	3,980,906.90
Profit	1,499,187.87
Loss	.....

Per Cent. 72.64.

129 Q. Mr. Roney, has the Interstate Commerce Commission ever made any rules regulating the items that should be charged to operating expenses and the classification of the disbursement of those items?

A. Yes sir.

Q. How do these items of operating expenses which you have exhibited for the years 1904, 1905 and 1906, correspond with the rules established by the Interstate Commerce Commission in such matters?

A. The details of the operating expenses in 1905, or rather in 1906, and 1907, are quite a little different from what they were prior to that.

Q. That is because of the Interstate Commerce Commission changing the rule?

A. Yes sir.

Q. Yes, but how do they compare, with the rulings of the Interstate Commerce Commission that were in force at those periods? For instance, did you charge in 1904, in making up your operating ex-

penses, didn't you charge in accordance with the ruling of the Commission as to what items should be charged to operating expenses?

A. In 1904?

Q. Yes.

A. Well, I think in 1904, there was no ruling as to what should be charged specifically, by the Interstate Commerce Commission.

Q. There was no ruling at that time?

130 A. No.

Q. I did not remember whether it took effect as early as that or not.

A. It did not take effect until 1906.

Q. These statements which you give for 1905 and 1906, are they made in accordance with the rulings of the Interstate Commerce Commission?

A. Yes sir.

Q. Well, the differences that exist, what were they as to items of detail, substantial differences?

A. Well, there are some items that are transferred from one account to another.

Q. Under the same general head, though?

A. Under the same general head though.

Q. The changes were made in the distribution under subheads rather than with respect to items that were charged to the general account?

A. Yes, that is right.

Mr. WILLIAMS: That is all, I think, with the Master's permission, that I will ask Mr. Roney just now. I will desire to examine him further after we examine another witness.

The MASTER: Do you desire to cross-examine Mr. Roney

131 now?

Mr. KORBLY: Not now. We will cross-examine when Mr. Williams gets through.

(Witness excused.)

JOHN H. BUCHANAN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. JNO. G. WILLIAMS:

Q. State your name, Mr. Buchanan.

A. John H. Buchanan.

Q. Where do you live, Mr. Buchanan?

A. At Terre Haute.

Q. What is your business?

A. I am in the Treasurer's Department now. I am Chief Clerk to the Assistant Treasurer.

Q. Where, in what office?

A. The Vandalia Railroad Company.

Q. What were you doing before that time? Were you in the Auditor's Office?

A. Yes.

132 Q. With Mr. Roney?

A. Yes.

Q. Are you the gentleman Mr. Roney detailed to make a statement of the earnings on traffic originating and ending on the line between here and the Illinois state line?

A. Yes sir, I was.

Q. For what years did you do that?

A. For the years 1904, 1905, and 1906.

Q. State to the Master what the earnings were for the year 1904 on freight originating on the line between here and Terre Haute, between here and the Illinois State line, and ending on that same line; classified freight, I mean.

A. Do you mean, Mr. Williams, the earnings on the freight originating and ending on the line between here and Terre Haute?

Q. No; let me state that over again; state the revenue derived from classified freight, the six classes of freight, during the year ending December 31st, 1904, on freight which originated on the line between here and the Illinois state line and which ended on that same line?

A. $79,803.80.

Q. Now what were the earnings on the same kind of freight between the same points, that is classified freight, beginning and originating between here and the Illinois State line, and ending on that same line, in 1905?

A. $91,067.56.

133 Q. What were those earnings for 1906?

A. $102,241.15.

Q. Now, Mr. Buchanan, what would the earnings have been in 1904, had the rates ordered by the Commission been collected instead of the company's rates that were actually collected?

A. In 1904 $52,222.12.

Q. What would those earnings have been for 1905 had the Commission rates been collected instead of the actual company rates that were collected?

A. $60,079.13.

Q. And what would those earnings have been in 1906 had the Commission rates been collected instead of the company rates that were actually collected?

A. $66,936.99.

Q. Now, Mr. Buchanan, turning again to the earnings that were actually made in 1904, tell us what the earnings for the year 1904 were on the classified freight originating at Indianapolis and ending on the line between Indianapolis and the Illinois state line?

A. You want the total of the classified freight?

Q. Just for Indianapolis west; total of the classified freight from Indianapolis west.

A. $36,204.52.

Q. Now, what were the earnings for the year 1905, on all

134 classified freight originating at Indianapolis and ending on the line between Indianapolis and the Illinois state line?

A. $40,203.34.
Q. And what were they for the year 1906?
A. $43,487.20.
Q. Now, what would those earnings have been in 1904, had the rates ordered by the Indiana Commission been applied instead of the Company's actual rates that were actually collected?
A. $23,347.68.
Q. And what would those earnings have been in the year 1905, on that freight had the Commission's rates been applied instead of the Company's rates?
A. $26,108.09.
Q. And what would those earnings have been in 1906 had the Commission's rates been applied instead of the Company's rates?
A. $27,583.46.

Cross-examination.

Questions by Mr. BERNARD KORBLY:

Q. Mr. Buchanan, these figures which you have given us with reference to the revenue from freight originating on the line between Indianapolis and the Illinois State line on the Vandalia Rail-
135 road Company for the years 1904, 1905 and 1906, were obtained by you from the waybills, were they not?
A. They were.
Q. Are those waybills in existence now?
A. They are.
Q. All separated into years?
A. Yes sir, by the months; they are put up in months.
Q. Are the waybills that you used in ascertaining the revenue from the freight, as was suggested in previous questions, separated from the other waybills that were turned in at the Auditor's office along the line of the Vandalia Railroad Company between here and the Illinois State line, between here and St. Louis?
A. I don't believe I catch the idea of the question. I didn't catch the idea of that question.
Q. (Preceding question read by the Reporter).
A. Yes sir, of the individual stations, were kept separate.
Q. Well, they are separate now in the Auditor's office at Terre Haute?
A. Yes sir.

Mr. WILLIAMS: I don't think he understands the question. At least, I don't, if you do.

Mr. KORBLY: I think he understands me.
136 Mr. WILLIAMS: If you will permit me, I will ask him a question.
Mr. BERNARD KORBLY: Certainly.

By Mr. WILLIAMS:

Q. All of the waybills are bound in books, aren't they?
A. Yes sir.
Q. By months?

A. Yes sir.

Q. And those waybills from which you have gotten this statement of earnings are not separated from any of the other waybills? They are all in the books, are they?

A. They are all in order in the books. They are separate in the books.

Q. Separate how?

A. They are separate so far as the stations are concerned. That is what I understood by the word separate there. That is, all Indianapolis billing is together in this book. Then after that comes Ben Davis, Plainfield, Cartersburg, and so on, but individual stations are kept separate.

By Mr. KORBLY:

Q. And mingled with those waybills showing the shipments of freight from Indianapolis to some point along the Vandalia line between here and the Illinois state line, you would find way-
137 bills for freight shipped from some point along the line between here and the Illinois state line to some point beyond the Illinois state line?

A. In the same book, yes sir.

Q. Did anybody check over your figures?

A. No sir.

Q. You stated in your examination in chief what the revenue would be or would have been for the years 1904 and 1905 and 1906, if the rates as adopted by the Railroad Commission of Indiana had governed? Your figures as given to the Master were based upon the amount of freight that was actually shipped in those years?

A. Yes.

Q. You don't know but what if the Railroad Commission rates had been in force during those years, but what the amount of freight would have been much larger, and, therefore, the revenue might have been greater?

A. I would not know anything about that, no sir.

Re-examination.

Questions by Mr. WILLIAMS:

Q. These waybills that come into the Auditor's office from the various stations are finally bound in a book, are they?

A. They are.

138 Q. By months?

A. Yes sir.

Q. There would be twelve in those books for each year?

A. There would.

Q. Now, in any waybill from Indianapolis, or in any lot of waybills from Indianapolis, there would be waybills to points running outside of this state as well as points within the state?

A. Yes sir.

Q. And there would be sometimes the same waybills, wouldn't there, freight destined for points outside of the state and points inside of the state?

A. Yes sir, in that same waybill.

Q. So what you had to do was to pick out this state traffic from all of these bills?

A. Yes sir.

Q. And they gave you the weight of each shipment?

A. Yes sir.

Q. And they showed the rate applied, didn't they?

A. Yes sir.

Q. Then in addition to this classified freight, the waybills covered a large amount of stuff that was not in the classified list, didn't they?

A. Yes sir.

Q. Commodity rates?

A. Yes sir.

139 Q. And what you have given the Master and the Court is the revenue that would have been derived from classified freight alone that originated on this line between Indianapolis and the Illinois State line and whose transit ended on that line?

A. Yes sir.

Mr. WILLIAMS: Does the Master understand?

The MASTER: I understand; the waybills show the destination of each consignment.

Mr. WILLIAMS: Yes sir, and the article, the weight and the rate.

Recross-examination.

Questions by Mr. KORBLY:

Q. Would you be kind enough to furnish me the total weight of the freight for the year 1904, on all freight that originated on that line between Indianapolis and the Illinois state line?

A. What do you want, classified, or otherwise?

Q. Classified.

Mr. WILLIAMS: Yes, he can give you that.

140 Mr. KORBLY: You have that right there?

Mr. WILLIAMS: Yes.

A. You want the total weight?

Q. Total weight, yes; what I want to know is the weight that goes with the revenue for the years 1904, 1905, and 1906, originating on the line between here and the Illinois state line. I mean the total weight, the tonnage.

Mr. WILLIAMS: You mean the weight represented by the revenue given? The actual weight?

Mr. KORBLY: Yes, the total.

Mr. WILLIAMS: Yes, he can give you that. It is a matter of computation.

Q. So that we may understand each other, you testified that in the year 1904 the revenue from all classified freight originating and ending on the line of the road known as the Vandalia road between Indianapolis and the Illinois state line was $79,803.80?

A. Yes sir.

Q. Now, what I want to know is, the total tonnage from which that revenue was produced?

141 A. Yes sir, I can give you that in pounds. 68,492,665 pounds in the six classes.

Q. Now give me that same tonnage for the year 1905?

A. 77,776,327 pounds.

Q. Now, give me the same tonnage for the year 1906 on all freight originating and ending on the line between Indianapolis and the Illinois state line, on classified freight?

A. 90,881,556 pounds.

Q. Now, please give the total weight of all classified freight originating in Indianapolis and ending on the line. Vandalia line, between Indianapolis and the Illinois state line for the year 1904?

A. 24,279,433 pounds.

Q. Now, give me the weight of the classified freight originating in Indianapolis and terminating on the Vandalia line between Indianapolis and the Illinois state line, for the year 1905?

A. 26,803,520 pounds.

Q. Now, give me the weight of the classified freight originating in Indianapolis and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1906?

A. 29,959,712 pounds.

Q. Now, I would like to have the total weight of all classified freight of the first class, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

142 A. 5,835,066 pounds; first class.

Q. What was the total weight of all classified freight of the second class, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line, for the year 1904?

A. 2,813,747 pounds.

Q. Now, I would like to have the total weight of all classified freight of the third class, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. 10,963,271 pounds.

Q. Now, I would like to have the total weight of all classified freight of the fourth class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois state line for the year 1904?

A. 5,398,290 pounds.

Q. Now, I would like to have the total weight of all classified freight of the 5th class, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. 39,751,349 pounds.

Q. Now, I would like to have the total weight of classified freight of the sixth class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line for the year 1904?

A. 3,730,942 pounds *pounds.*

Q. Now, I would like to have the total weight of all
143 classified freight of the first class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line for the year 1905?

A. 1905, first class, 6,395,326 pounds.

Q. Now, give me the total weight of all classified freight of the second class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line for the year 1905?

A. Second class, 4,743,012 pounds.

Q. Now, I would like to have you give me the total weight of all classified freight of the third class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line for the year 1905?

A. Third class, 10,688,749 pounds.

Q. Now, I would like to have you give me the total weight of all classified freight of the fourth class, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line, for the year 1905?

A. Fourth class, 5,868,931 pounds.

Q. Now, give me the total weight of all classified freight of the fifth class originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1905?

A. 41,074,459 pounds.

Q. Now, give me the total weight of all classified freight of
144 the sixth class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line in the year 1905?

A. Sixth class, 9.005,850 pounds.

Q. Now, give me the total weight of all classified freight of the first class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1906?

A. 1906, first class; 6,735,894 pounds.

Q. Now, I would like to have you give me the total weight of all classified freight of the second class, originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1906?

A. Second class, 3,124,772 pounds.

Q. Now, I would like to have you give me the total weight of all classified freight of the third class, originating and terminating on the Vandala Line between Indianapolis and the Illinois State Line for the year 1906?

A. Third class, 12,558,097 pounds.

Q. Now, give me the total weight of all classified freight of the fourth class, originating and terminating on the Vandalia Line, between Indianapolis and the Illinois State Line, for the year 1906?

A. 6,802,485 pounds.

Q. Now, give me the total weight of all classified freight
145 of the fifth class, originating and terminating on the Vandalia Line, between Indianapolis and the Illinois State Line for the year 1906?

A. Fifth class, 49,175,432 pounds.

Q. Now, give me the total weight of all classified freight of the sixth class, originating and terminating on the Vandalia Line, between Indianapolis and the Illinois State Line, for the year 1906?

A. Sixth class, 12,484,876 pounds.

Q. Now, Mr. Witness, kindly give us the total weight of all classified freight of the first class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1904?

A. First class, 3,909,146 pounds.

Q. Give us the total weight of all classified freight of the second class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1904?

A. Second class, 1,773,083 pounds.

Q. Now, give us the total weight of all classified freight of the third class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1904?

A. Third class, 8,042,417 pounds.

Q. Give us the total weight of all classified freight of the fourth class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1904?

A. Fourth class, 3,265,131 pounds.

146 Q. Now, give us the total weight of all classified freight of the fifth class, originating at Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1904?

A. Fifth class, 5,873,164 pounds.

Q. Now, give us the total weight of all classified freight of the sixth class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1904?

A. Sixth class, 1,416,492 pounds.

Q. Now, give us the total weight of all classified freight of the first class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois state line for the year 1905?

A. 1905, first class, 4,069,903 pounds.

Q. Now, give us the total weight of all classified freight of the second class, originating at Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1905?

A. Second class, 2,882,174 pounds.

Q. Now, give us the total weight of all classified freight of the third class, originating at Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Third class, 7,688,010 pounds.

Q. Now, give us the total weight of all classified freight
147 of the fourth class, originating at Indianapolis destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Fourth class, 3,602,011 pounds.

Q. Now give us the total weight of all classified freight of the fifth class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Fifth class, 6,119,862 pounds.

Q. Now, give us the total weight of all classified freight of the sixth class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Sixth class, 2,440,560 pounds.

Q. Now, give us the total weight of all classified freight of the first class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. 1906, first class, 4,456,371 pounds.

Q. Now, give us the total weight of all classified freight of the second class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1906?

A. Second class, 2,003,666 pounds.

148 Q. Now, kindly give us the total weight of all classified freight of the third class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. Third class, 8,759,175 pounds.

Q. Now, kindly give us the total weight of all classified freight of the fourth class, originating in Indianapolis and destined to some point on the Vandalia Line, between Indianapolis and the Illinois State Line, for the year 1906?

A. Fourth class, 4,430,861 pounds.

Q. Now, kindly give us the total weight of all classified freight of the fifth class, originating in Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. Fifth class, 6,855,394 pounds.

Q. Now, Mr. Witness, please give us the total weight of all classified freight of the sixth class, originating at Indianapolis and destined to some point on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. Six class, 3,454,245 pounds.

Q. Now, Mr. Witness, do the waybills show on what trains this freight is carried?

A. No sir.

Q. You have no way of ascertaining that fact from the
149 waybills?

A. No sir.

Q. Well, the show bills show what cars the freight was in, the number of the car, do they not?

A. Well, not always; for way-freight it would not.

Q. What?

A. For way freight picked up at these way stations, our tissue copies would not show it. Where it was loaded directly into the car, it would show.

Q. Would the way bills show the number of the car into which the freight was placed, where the freight originated at Indianapolis destined to some point along the Vandalia line, between Indianapolis and the Illinois State line?

A. Yes sir.

Q. You have a record, have you not, of the train that car goes into?

A. Yes sir, the car accountant has it.

Q. Well, would it be possible for a statement to be compiled by some employé of the Vandalia Railroad Company, showing what train the freight that you have testified to as having originated at Indianapolis was carried by?

A. It would be possible, yes.

Q. Was any compilation made by you, or anybody else that you know of, along these lines, endeavoring to ascertain in what trains this freight was carried?

A. Not to my knowledge, no.

150 Q. Have you figured the revenue for the first class on all classified freight for the year 1904, on freight originating and terminating on the Vandalia road between Indianapolis and the Illinois State line?

A. I copied it from the waybill, as made.

Q. Is it shown on your compilation sheet?

A. Yes sir.

Q. And for the other classified rates?

A. Yes sir.

Q. Please state the revenue derived from the first class on freight originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. $14,627.70.

Q. Please state the revenue derived from the second class on freight originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. Second class, $5,337.41.

Q. Please state the revenue derived from the third class on freight originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. Third class, $16,873.24.

Q. Please state the revenue derived from the fourth class of freight originating and terminating on the Vandalia line

151 between Indianapolis and the Illinois State line, for the year 1904?

A. Fourth class, $5,784.52.

Q. Please state the revenue derived from the fifth class on freight

originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. Fifth class, $34,385.50.

Q. Please state the revenue derived from the sixth class on fre*gith* originating and terminating on the Vandalia line between Indianapolis and the Illinois State line for the year 1904?

A. Sixth class, $2,795.43.

Q. Please state the revenue from the first class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1905?

A. 1905, first class, $16,377.61.

Q. Please state the revenue derived from the second class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1905?

A. Second class, $9,342.88.

Q. Please state the revenue derived from the third class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line for the year 1905?

152 A. Third class, $16,816.99.

Q. Please state the revenue derived from the fourth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. $6,383.41.

Q. Please state the revenue derived from the fifth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Fifth class, $35,331.61.

Q. Please state the revenue derived from the sixth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1905?

A. Sixth class, $6,815.06.

Q. Please state the revenue derived from the first class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. 1906, first class, $17,309.56.

Q. Please state the revenue derived from the second class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. Second class, $5,939.85.

153 Q. Please state the revenue of the third class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, for the year 1906?

A. Third class, $19,668.21.

Q. Please state the revenue derived from the fourth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois state line, for the year 1906?

A. Fourth class, $7,375.82.

Q. Please state the revenue derived from the fifth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1906?

A. Fifth class, $42,500.97.

Q. Please state the revenue derived from the sixth class on freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State line, for the year 1906?

A. Sixth class, $9,446.74.

Q. Now, please state the revenue derived from the first class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State line, for the year 1904?

A. First class, $10,051.83.

Q. Please state the revenue derived from the second class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois
154 State Line, for the year 1904?

A. Second class, $3,466.12.

Q. Please state the revenue derived from the third class of freight, originating in Indianapolis and terminating on the Vandalia line, at some point between Indianapolis and the Illinois State Line, for the year 1904?

A. Third class, $12,693.88.

Q. Now, please state the revenue derived from the fourth class of freight originating in Indianapolis and terminating on the Vandalia Line, at some point between Indianapolis and the Illinois State Line, for the year 1904?

A. Fourth class, $3,485.66.

Q. Now, please state the revenue derived from the fifth class of freight originating in Indianapolis and terminating on the Vandalia Line, at some point between Indianapolis and the Illinois State Line, for the year 1904?

A. Fifth class, $5,454.79.

Q. Now, please state the revenue derived from the sixth class of freight, originating in Indianapolis and terminating on the Vandalia Line, at some point between Indianapolis and the Illinois State Line, for the year 1904?

A. Sixth class, $1,052.24.

Q. Now, please state the revenue derived from the first class of freight originating in Indianapolis and terminating on the
155 Vandalia Line at some point between Indianapolis and the Illinois State [illegible], for the year 1905?

A. 1905, first class, $10,649.79.

Q. Now, please state the revenue derived from the second class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State Line, for the year 1905?

A. Second class, $5,885.47.

Q. Now, state the revenue derived from the third class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State Line, for the year 1905?

A. Third class, $12,320.68.

Q. Now, please state the revenue derived from the fourth class of freight originating in Indianapolis and terminating on the Van-

dalia Line, at some point between Indianapolis and the Illinois State line, for the year 1905?

A. Fourth class, $3,911.12.

Q. Now, please state the revenue derived from the fifth class of freight originating in Indianapolis and terminating on the Vandalia Line, at some point between Indianapolis and the Illinois State Line, for the year 1905?

A. Fifth class, $5,632.74.

Q. Now, please state the revenue derived from the sixth class of freight originating in Indianapolis and terminating on the Vandalia Line, at some point between Indianapolis and the Illinois State Line, for the year 1905?

156 A. Sixth class, $1,803.54.

Q. Now, please state the revenue derived from the first of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State line, for the year 1906?

A. 1906, first class, $11,745.81.

Q. Now, please state the revenue derived from the second class of freight originating in Indianapolis and terminating on the Vandalia line at some point between Indianapolis and the Illinois state line, for the year 1906?

A. Second class, $3,905.17.

Q. Now, please state the revenue derived from the third class of freight originating in Indianapolis and terminating on the Vandalia line at some point between Indianapolis and the Illinois state line, for the year 1906?

A. Third class, $14,088.32?

Q. Now, please state the revenue derived from the fourth class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State Line, for the year 1906?

A. Fourth class, $4,801.64.

Q. Now, please state the revenue derived from the fifth class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois state line, for the year 1906?

A. Fifth class, $6,301.56.

157 Q. Now, state the revenue derived from the sixth class of freight originating in Indianapolis and terminating on the Vandalia Line at some point between Indianapolis and the Illinois State line, for the year 1906?

A. Sixth class, $2,644.70.

Q. How did you arrive at what the revenue would be for the years 1904, 1905, and 1906, on all classified freight originating and terminating on the Vandalia Line between Indianapolis and the Illinois State Line, if the rates of the Railroad Commission had been enforced?

A. I made a percentage on it, showing the exact per cent. the Commission rates bore to our own rates.

Q. What percentage did you figure?

A. Well, for instance; now you made the rate eight cents, and we had it ten cents; I took eighty per cent. of the revenue. That is what it would mean. And that is where I made the same revenue on the receipts.

Q. In other words, you figured that on the different classes, didn't you?

A. Yes sir.

Q. And you took the total tonnage of all freight for the first class for the year 1904 and ascertained what the revenue under your per-cent. rates was, and then you took that same weight and ascertained what the revenue would have been, if the rates fixed by the Railroad Commission for the first class had been in vogue, at that time?

158 A. No, not on weight; on revenue.

Q. Oh, you figured it on revenue, not on weight?

A. Not on weight. I figured it on the basis of revenue.

Q. That is true with reference to all the other classes?

A. It is.

Q. You did not figure then on each way-bill separately, as to what the revenue would have been if the Indiana Railroad Commission rates had been in vogue?

A. No sir.

Q. You ascertained the revenue that was received by the Vandalia Railroad Company by figuring the revenue from each way bill, or on each waybill?

A. Yes sir.

Q. And after you arrived at the amount of the revenue, then you estimated what would have been the income if the Indiana Railroad Commission rates had been in force?

A. On a percentage basis, yes.

Q. As I understand you, you mean a percentage for each class, don't you?

A. Yes sir.

Q. And figured on the total revenue derived from that particular class?

A. Yes sir.

159 By Mr. WILLIAMS:

Q. Let me have you explain that a little clearer. To illustrate: You found out from the waybills what first class freight had been shipped from Indianapolis to each station?

A. Yes.

Q. And the revenue that had been earned on that freight from Indianapolis to each station?

A. Yes sir.

Q. Say, the rate that the Company's tariff yielded from Indianapolis to a certain station was ten cents a hundred, and the Commission's rate from Indianapolis to that same station was eight cents, a hundred, then you state that on that freight from Indianapolis to that station, first class, which the Company had actually carried and earned so much revenue, the Commission's rate, which was eighty per cent. of the company's rate, would have earned eighty

per cent. of that revenue which had been actually earned under the company's rates?

A. That is correct, yes sir.

Q. And you applied that to all the freight shipped from Indianapolis to each station and from every other station to other stations on the road on each class of freight?

A. Yes sir.

160 By Mr. KORBLY:

Q. And do the tables which you now have before you show the results of your investigation and estimates and figuring in detail?

A. Well, all that is here now, is a recapitulation.

Q. For instance, the sheets that you have before you now, do they show the total weight of freight originating in Indianapolis and terminating in Terre Haute for the year 1904 and the revenue derived from that freight?

A. Yes sir.

Q. And do the tables before you show the total tonnage of freight originating in Indianapolis and terminating at each point between Indianapolis and the Illinois State line for the year 1904, classified?

A. Yes sir.

Q. And also the revenue derived from it?

A. Yes sir.

Q. For each of the years, 1904, 1905 and 1906?

A. For each year.

Q. Now, do your tables show what the revenue would have been on each class on all freight originating and terminating on the line between here and the Illinois State line, based upon the rates established by the Indiana Railroad Commission?

A. Yes sir.

Q. It shows that in detail?

A. Yes sir.

161 Q. In those statements?

A. Yes sir.

(Witness excused.)

Mr. KORBLY: You will let us have these statements for inspection?

Mr. WILLIAMS: You have got them all now, I think, but you can have them. I delivered a set to the Railroad Commission. I don't know what became of them, but if they are not complete, you are perfectly welcome to these.

Mr. KORBLY: Well, is the copy that you delivered to the Railroad Commission exactly like these?

Mr. WILLIAMS: I don't remember whether I delivered all the detail sheets, but they have a copy of the recapitulation sheets. These figures that he has given to you show the ultimate result, but you can find under the head of every class, every pound of freight that moved from every station to every other station, and the revenue derived, and the amount of revenue derived if the Commission rate had been in force.

162 Mr. E. M. WHITE: On the same weight of freight?

Mr. WILLIAMS: Yes, on the same weight of freight. You can take these and look them over, if you want to.

Adjourned to 1:30 P. M.

163 TUESDAY, *September* 8, 1908—1:30 p. m.

The hearing was resumed before the Master.

Present: The same as before recess.

The cross-examination of the witness, W. S. RONEY, was commenced as follows:

Questions by Mr. KORBLY:

Q. Mr. Roney, if I understand you, prior to the consolidation which took place on January 1, 1905, the T. H. & I. Railroad, which is the same line of road which is now known as the Vandalia, running from Indianapolis to the Illinois State line, kept a separate account?

A. They did.

Q. From Indianapolis to the Illinois state line?

A. Yes.

Q. Of all freight originating on the line and all business on that line?

A. Yes.

Q. Then after January 1, 1905, and for the years that you have testified about, the account of all freight originating on the Vandalia Line has gone into the general account of the St. Louis Divis-

164 ion of the Vandalia, running from Indianapolis to East St. Louis?

A. Yes.

Q. And the exhibits from which you testified this morning, being exhibits one and two, showing the expense for the years 1905 and 1906, of Maintenance of Way and Structures, Maintenance of Equipment, Conducting Transportation, General Expenses, includes all of the expenses for those years, under those separate heads on the entire line from Indianapolis to St. Louis?

A. Yes sir.

Q. Now, Mr. Roney, is there any way by which you could ascertain the cost of transporting the classified freight originating on the Vandalia line between Indianapolis and the Illinois State line and terminating on that line?

A. Is there any way by which I could ascertain the freight?

Q. Read the question; (The preceding question was read by the Reporter).

A. No.

Q. You can only give us according to the methods of your bookkeeping what it cost to transport freight on the St. Louis Division, between Indianapolis and East St. Louis, but you can't give us the cost of transporting the freight originating on the line and terminating on the line between here and the Illinois state line?

A. Well, I understood the question a moment ago as to giving the cost of class freight, of the different classes, is that correct?

165 Q. Yes.

A. No, we do not give the cost of the classes of freight shipped on the main line of the St. Louis Division; we do not do that.

Q. You do not even do that on the main line?

A. No.

Q. Well, what is the difference, Mr. Roney, between the rates in Indiana and the rates in Illinois, if you know?

A. I don't know. I don't think there is any appreciable difference.

Q. What is the difference in cost in transporting freight per ton per mile of a given class in Illinois and the transportation of the same freight per ton per mile in Indiana, if you know?

A. I couldn't tell you.

Q. On the St. Louis Division of the Vandalia?

A. I couldn't tell you now.

Q. Would there be any difference?

A. Speaking from my knowledge, I would say no.

Q. You don't know? Is there any one in your employ who could tell us whether there is such a difference?

A. A difference as between the cost of transporting a ton of freight in Illinois and Indiana? Is that it?

Q. Yes sir; the same distance?

A. No.

166 Q. You say you don't know of any person who could give me that information?

A. No.

Q. What is your understanding, Mr. Roney, in keeping your books between domestic freight and foreign freight, or local freight and foreign freight?

A. We call local freight all freight originating on the road. We call foreign freight all freight coming to us or going from us.

Q. Yes, to illustrate; local freight is freight originating at any point on your line of road between Indianapolis and East St. Louis and destined to any point?

A. Yes.

Q. It may be Chicago or Los Angeles or New Orleans, that is local freight, according to your definition?

A. Yes sir.

Q. Foreign freight is freight originating off of your line of road and destined to some point on your line of road between here and East St. Louis?

A. Yes.

Q. And when you testified this morning and used the word "local" as distinguished from "foreign" freight, you used the word in the sense that you now explain?

A. Yes.

167 Q. Your company does not keep its records in such shape as to make it possible for you to give an estimate of what it would cost to transport the tonnage about which Mr. Bu-

chanan testified this morning for the years 1904, 1905 and 1906? Does it?

A. No.

Q. No possible way of arriving at that, is there?

A. There is no way I can think of to arrive at that; that is, the cost of the class, of transporting under these classified rates?

Q. In other words, it is possible for you or your employees to ascertain from the records under your control the revenue derived from freight originating and teminating on your Vandalia Line between here, Indianapolis, and the Illinois State Line?

A. Yes.

Q. From the waybills?

A. Yes.

Q. But there is no way from which either accurate or estimated figures can be furnished to determine what it costs to transport that freight?

A. No.

Q. And all of the figures that you gave this morning in your examination in chief in answer to questions propounded to you by Mr. Williams, were given with reference to the revenue and the expenses derived and paid on the local freight and foreign freight, as you have defined a few minutes ago what you mean by those terms?

168 Mr. WILLIAMS: And passenger service, too.

Q. Yes, and passenger service?

A. Yes.

Q. As I understand, then, you testified to no figures this morning which would tend to show the cost of transporting domestic freight, and when I use the words "domestic freight", I mean freight originating and terminating within the State of Indiana on the line of road known as the Vandalia?

Mr. WILLIAMS: I object to that. He doesn't know whether it tends to show it or not. I say what he has testified to does tend to show it. That is a conclusion.

The MASTER: He can answer the question and let the objection be noted.

A. No.

Q. None of the figures tabulated in Exhibits 1 and 2, under the various headings of those exhibits, in any way pertains to the cost of transporting domestic freight on the Vandalia Line within the State of Indiana, St. Louis Division?

A. Do any of those expenses refer to the cost?

169 Q. Exclusively, I mean?

A. No, not exclusively.

Q. They have reference to the transportation of freight and the transportation of passengers on the line extending from Indianapolis to East St. Louis?

A. Yes sir.

Q. Then, when you testified this morning that the ratio of the operating expenses to the earnings in the year 1904 was 76.04 per

cent., or in other words, that out of every dollar received by the railroad, it took 76.04 cents to earn that dollar, that percentage has reference to the entire St. Louis Division of the Vandalia Railroad Company?

A. Yes sir.

Mr. WILLIAMS: No, it don't, Mr. Roney, for the year 1904.

Q. Oh, pardon me. That has reference now to the business between Indianapolis and the Illinois state line?

A. Exactly.

Q. Because at that time, it was before the consolidation, and was known as the T. H. & I., but that percentage now has reference to all business done on the line, and especially all freight business known as local freight and foreign freight?

170 A. It has reference to all business.

Q. The same distinction that you make now with reference to local and foreign freight was made by you as the Auditor of the Company in 1904, wasn't it? That same distinction existed in 1905 and 1906?

A. Yes sir.

Q. And the ratio of the operating expenses to the earnings in 1905 had reference to the entire St. Louis Division, and had reference to all business, local and foreign, as I understand it?

A. Yes sir.

Q. And also in 1906?

A. Yes sir.

Q. How many miles, is it, from Indianapolis to the Illinois state line on the Vandalia?

A. Eighty miles.

Q. About 73 from here to Terre Haute, isn't it?

A. Yes sir.

Q. Mr. Roney, are you acquainted with the classified rates in Illinois for the Vandalia Railroad Company?

A. I am not familiar with them.

Q. Are you familiar with the classified rates between here and the Illinois state line?

A. In a general way, I know them.

Q. But not so familiar with them that you would testify about them?

A. I think so.

171 Q. You say you are familiar enough with them to testify?

A. I think so; at least, I would attempt it.

Q. Well, for instance, are you familiar with the rate in Illinois for the fourth class, for say, a distance of 30 miles?

A. No, I couldn't give you that.

Q. Who would be able to give that?

A. Well, the tariffs would give that.

Q. Who, in the employ of the Vandalia Railroad Company, Mr. Roney, could give us that information?

A. My general freight clerk could give the information from the tariffs over which he has supervision.

Q. What is his name?

A. L. J. Treat.
Q. Where does he reside?
A. Terre Haute, Indiana.
Q. What official capacity has he?
A. He is Chief Clerk of the Freight Department of the Vandalia Auditor's office.
Q. Now, how long have you been connected with the Vandalia, thirty-two years?
A. About thirty two-years, yes sir.
Q. And during that time that you have been connected with the Vandalia Railroad Company has there been any reduction in the rates, classified rates?
A. I think there was at one time a reduction in the rates.
172 I don't remember what time it was.
Q. How many years ago was that?
A. I don't remember.
Q. What was the reduction?
A. The detail of that character of business does not come to me any more than in a general way.
Q. Was it prior to 1890?
A. I am not prepared to say.
Q. Was it during the first part of your employment with the Vandalia Railroad Company, or the latter part?
A. It was the earlier part.
Q. Do you know when the Official Classification was adopted?
A. No, I do not.
Q. Wasn't it in 1887?
A. It might have been.
Q. Now, Mr. Roney, there can be an increase in rates in two ways, can't there? One way, would be to increase the tariffs, and another way would be to change the classification and place an article that now occupies a position in the fourth class and move it up to third class; that would increase the rate, wouldn't it?
A. It might be.
Q. So that you could increase the rate of transportation, without in any way changing the tariffs?
A. Well, you change the tariffs by changing the classifica-
173 tion.
Q. Now, have you any recollection of an increase in rates being made by the Vandalia Railroad Company, classified rates, by changing the classification, since your connection with the Company?
A. I have not.
Q. There have been no changes?
A. I have no recollection of any changes.
Q. Do you know anything about an official change in 1900?
A. I know of the official changes, but as to the detail of the changes, I don't know. Of course, there is a good deal of detail of that sort of thing which doesn't come to me.
Q. Do you know whether or not the official change in the classifi-

cation made in 1900 increased the rates or the charges to be paid for certain classes of freight?

A. I do not.

Q. Who would know about that, Mr. Roney? Mr. Treat that you mention?

A. Yes.

Q. He would know about that, would he?

A. Yes.

Q. I will ask you, in order to refresh your recollection, whether or not there has been any change in the classified rates since 1887?

A. I presume I ought to be rather ashamed of my ignorance
174 of those things, but, as I say, they do not come to me in any method by which I can give you a positive answer.

Re-examination.

Questions by Mr. WILLIAMS:

Q. Mr. Roney, your office has nothing whatever to do with the making of rates or the making of classifications, has it?

A. No.

Q. That is exclusively in charge of the Freight Department? Isn't it?

A. It is.

Q. And the General Freight Agent is the chief officer of that Department?

A. That is right.

Q. All that you are concerned with classifications and rates is to take up the billing and see that the proper rates are charged upon the proper freight, in your office?

A. That is right.

Q. And you are furnished the files and information necessary to obtain and do that checking from the General Freight Office?

A. I am.

Q. And you never do any of that checking yourself, do you?

A. No sir.

Q. It is done by a Department of your office that is known as the Rate Department?

A. Yes sir.

175 Q. Whenever you make up a ratio of operating expenses to earnings, you take all earnings from all sources, and all expenses and compare those?

A. Yes.

Q. And necessarily in that statement of expenses would be included the expenses incurred in moving any kind of freight?

A. Yes sir.

Q. Classified, as well as any other kind?

A. Yes sir.

Q. But it would not be so distributed as to show what expense was incurred on account of moving first class, or any other class?

A. No.

Q. Or any freight under commodity rates?
A. No.
Q. Or moving any distance along the line of the road?
A. No.
Q. Whatever expense was included in moving the freight, was included in the statement of expenses that you have rendered for each one of these years?
A. Yes sir. I can hardly see how it would be possible to make an estimate of cost of class freight expenses.
Q. To take it out of the general expense and allot it to the cost of the particular class of freight, has it been possible yet to do that in railroad bookkeeping?
A. No.

(Witness excused.)

176 W. C. DOWNING, a witness called on behalf of the Complainant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. JNO. G. WILLIAMS:

Q. State your name?
A. W. C. Downing.
Q. What is your occupation?
A. Superintendent of the St. Louis Division of the Vandalia Railroad.
Q. Where do you live?
A. Terre Haute, Indiana.
Q. How long have you occupied your present position of Superintendent?
A. About six years.
Q. What part of the consolidated line comprises the St. Louis Division?
A. What was formerly the Terre Haute and Indianapolis Railroad, extending from Indianapolis to the Illinois State Line, and the St. Louis, Vandalia and Terre Haute Railroad, extending from the Indiana and Illinois state line to East St. Louis.
Q. That was one Division prior to the consolidation, was it, known as the St. Louis Division?
A. Yes sir.
177 Q. And you had charge of it prior to the consolidation as well as since?
A. Yes sir.
Q. In discharging your duties as Superintendent, have you in special charge, the expenditures for operating exp-ses?
A. Yes sir.
Q. Have you any means of telling the Court what it actually costs to handle any particular class of freight between any particular points on your division?
A. No sir.
Q. Why can't you do it in a general way?

A. It is impossible to separate or localize the expenses so as to assign any particular cost to a particular class of traffic.

Q. Take the large head of Maintenance of Way and Structures, would it be possible for you to so distribute that account as to be able to tell what it costs, so far as that was concerned, to haul a box of dry goods from Indianapolis to Terre Haute?

A. No sir.

Q. There are a great many items, of course, Mr. Downing, that you can't localize, aren't there?

A. Yes sir.

Q. For instance, under the head of Conducting Transportation, the wages paid engineers and firemen, you could readily localize or find out what you paid to engineers and firemen of freight trains, couldn't you?

178 A. Yes.

Q. And charge that against freight expenses?

A. Yes.

Q. You do do that, don't you?

A. Yes.

Q. Take the Maintenance of Equipment; the maintenance of freight cars, you can readily localize that, can't you, what it costs to maintain them?

A. Yes.

Q. And repairs to freight locomotives, you can localize that?

A. Yes.

Q. But, of course, there is a large expense connected with the shop and work that still would be undistributed as to freight and passenger, wouldn't there be?

A. Yes sir.

Q. Have you any data, that will enable you to say whether it costs more to handle strictly local freight, that is, freight which is handled over platforms in freight houses, than it does to handle through freight, or to operate local freight trains, than it does to operate through freight trains? Have you any data from which you can say whether it costs more or less?

A. There are a few items which give an indication of the relative cost, such as the wages of the train-crew, fuel consumed by freight engines, and station labor at local stations.

179 Q. Now, as to those items, you can definitely tell, can't you, how much more the engineers or firemen or conductors or brakemen get on locals than on through freights?

A. Yes sir, we have different wage schedules for them.

Q. And you can tell how much coal the local freight train burns as compared with a through freight train, can't you?

A. We have, as a result of tests, been able to determine that.

Q. I say you can tell that?

A. Yes.

Q. Then, the station expenses at which this local freight is handled, you have that, haven't you?

A. Yes sir.

Q. Now, so far as the line between here and the Illinois state line

is concerned, have you both through and local freights running on that line?

A. Yes.

Q. And did you have in the years we have been talking about, 1904, 1905 and 1906?

A. Yes sir.

Q. What were the trains that you specifically called "local" trains between those points in any of those years? They have been the same in all the years, haven't they?

A. Yes sir. They are the trains that handle the freight at local stations, intermediate points, distributing and picking up the freight.

Q. Between what points,—and that run between what points?

A. Between Indianapolis and the Illinois state line.

180 Q. In each direction?

A. Yes sir.

Q. And how often?

A. Every day; every working day.

Q. That excludes holidays and Sundays?

A. Sundays and holidays, yes sir.

Q. Now, in 1904, how did the wages paid engineers on that local freight compare with wages paid your engineers on through freight?

A. An engineer of a local freight in 1904 was paid $4.00 per trip.

Q. That meant from where?

A. From Indianapolis, to Terre Haute.

Q. Or from Terre Haute to Indianapolis?

A. Or from Terre Haute to Indianapolis, yes sir. The engineer of a through freight was paid $3.15 per trip between the two points.

Q. How about the wages of the firemen on these respective trains?

A. The fireman on the local freight was paid $2.25 per trip; on a through freight, $1.85 per trip.

Q. How about the conductors and brakemen?

A. The conductor was paid $3.70 per trip on local, and $2.45 per trip on through freight; the brakemen on local freight received $2.50 per trip, and on through freight, $1.85 per trip. I might also

181 add there are three brakemen on the local freight, and two brakemen on the through freight.

Q. Did these same differences exist in 1905?

A. Yes sir. The difference was a little greater in 1905.

Q. What I meant was, were they the same? There was a change made in 1905?

A. There was a change made in 1905.

Q. Were they the same in 1905 and 1906?

A. No sir; there was still another change made in 1906.

Q. Then, we will have to give them for each year; then just give me for 1905 the difference in the wages between the different trainmen?

A. In 1905, the engineer on local freight received $4.10, and on through freight $3.15; the brakemen on local freight received $2.30, and on through freight, $1.85. That constitutes all the changes in 1905, as compared with 1904.

Q. Well, the differences, then, as to the trainmen, were the same differences that you have testified about for 1904?

A. Yes sir.

Q. What were the differences in 1906?

A. In 1906, the engineer on local freight received $4.25 per trip, and the engineer on through freight received $3.15 per trip; the firemen on local freight were paid $2.35, and on through freight, $1.85. That was all the changes made in 1906.

Q. Now, these figures that you have given us have not taken into consideration the general increase in wages that was made
182 in 1906?

A. No sir; that was made December 1, 1906.

Q. But, there would be the same differences between the prices paid, because the ten per cent applied to each one?

A. Yes sir.

Q. That was a horizontal raise of ten per cent on all wages that were less than $200 per month, wasn't it?

A. Yes sir.

Q. Now, can you state the percentages, and will you do so, if you can, of increase of cost in handling these local freight trains, growing out of the difference in wages that you have mentioned for the several years you have testified about?

A. In 1904, the increase in wages paid to local crews, freight crews in the through freight service, was 52 per cent; in 1905, it was 60 per cent; in 1906, it was 68.4 per cent. That includes the additional man on local freight, as well as the difference in wages paid.

Q. You stated, I believe, that through freight carried two brakemen and the local freight three?

A. Yes sir.

Q. Now, you stated that you are able, from data that you had, to know that local freight trains burn more coal than through freights, did you?

A. Yes.

Q. Explain how you arrive at that conclusion.

183 A. For a number of years we kept a record of the individual performance of engines, as regards fuel consumed, and in that way we were able to determine accurately the amount of coal consumed in local freight service as compared with through freight service.

Q. The object of these records being to give a premium to the engineer and fireman who showed the best results, wasn't it?

A. Yes sir, and that required us to keep a record.

Q. And they were called your coal premium records, were they not?

A. Yes sir.

Q. During what years have you examined those coal premium records with a view of determining the consumption of coal as between through and local freights?

A. About four years; I think it ended in 1901.

Q. We stopped that system in 1901?

A. We discontinued paying premiums in 1901, and, therefore, discontinued the record.

Q. But you examined the records for four years, including 1901?

A. Yes sir.

Q. Now, what was the result of that, Mr. Downing, so far as coal consumption was concerned?

A. It showed that the local freight engines consumed from one hundred to one hundred and forty per cent more coal per
184 mile, per car mile, than engines in through freight service.

Q. Well, can you give some of the exact figures, as to any year there, how many pounds per mile was consumed by through and how many by local freight? Have you got that before you?

A. Yes sir, I have the records for each month of each year.

Q. Have you got it footed for a year?

A. No sir; well, I have it here in this statement.

Q. Take it from your analysis that you have there before you, if you have it. That will be the quickest way to get at it.

A. In 1901 the average pounds of coal consumed per car mile of through freight service was 4.65 pounds.

Q. Then in loca-, how much?

A. And in local, it would be nearer 12 pounds.

Q. Can't you give us the actual?

A. No, I can give it to you by months for that year. In the analysis, I assumed it to be 100 per cent, instead of what it actually was. It varies from 10.07 pounds to 15.012 pounds, during the different months.

Q. Take it in 1905, what was the consumption per car mile, based upon these car premium records for previous years, on through freight?

A. I haven't got that.

Q. Did you figure it for 1905?

A. I assumed that the local was twice that of the through,
185 100 per cent greater, because that was the minimum increase that I find during the four previous years.

Q. The minimum?

A. The minimum.

Q. So that you would be perfectly safe in saying that the difference would be at least that much?

A. Yes.

Q. Now, let us take it on that basis? What was it for 1905?

A. On that basis, the pounds of coal consumed per car mile in local freight in 1905 was 14.58 pounds, and in through freight it was 7.29.

Q. And in 1906?

A. In 1906, the pounds of coal per car mile loca-, was 15 pounds, and for through freight 7.5 pounds.

Q. Now, what do you mean by car mile, Mr. Downing, in connection with that statement?

A. That is reduced to what is called the loaded car mile basis, in which two empty cars are counted as one load.

Q. What do you do then, after getting the number of cars in the train?

A. Multiply it by the total mileage the car has moved, and it gives us the total car miles.

Q. That would distinguish it from the miles the engine made?

A. Yes.

Q. And you are investigating that consumption of coal on the basis of what work the engine did, rather than the number
186 of miles it ran?

A. Yes sir, entirely.

Q. And that would be shown by how many miles it hauled a certain number of cars?

A. Yes sir.

Q. Now, Mr. Downing, so far as station labor is concerned, what do you figure that upon, showing an excess cost of handling local as against through freight?

A. Practically all of the station labor at local stations that is chargeable to handling freight traffic should be assigned to local traffic, as the agents are not connected with the movement or interested in the movement of through traffic; that is, through all points excepting the terminals, Terre Haute and Indianapolis.

Q. So that, in your judgment, what station labor should be charged if you are endeavoring to ascertain the difference between the cost of handling the local and through freight? What station labor outside of the terminals should be charged against the local freight?

A. All that is chargeable against freight traffic.

Q. At the terminals, what would be your judgment as to that?

A. As near as I could estimate it, about fifty per cent should be charged to local and fifty per cent to the through.

Q. Can you give us your reasons for making that estimate?

187 A. The freight house force, laboring forces, are assigned principally to the handling of local freight. The clerical forces are more equally divided between the two, and without being able to figure it out accurately, it seems to be the opinion of our agents, and from our records, that the estimate of fifty per cent seems to be fair.

Q. Take the Indianapolis station down here, we had to employ in operating that station, platform handlers, don't we?

A. Yes.

Q. Now, what do those platform handlers do?

A. They unload and load freight into the cars.

Q. Over the platforms?

A. Over the platforms.

Q. They do not touch any through freight?

A. No, sir, they do not touch any through freight.

Q. That is, freight that comes through Indianapolis?

A. No sir.

Q. Then you have in addition to the platform laborers, what else, in the shape of labor? A clerical force?

A. We have a clerical force, the checking and billing clerks.

Q. They make out all the bills?
A. Yes sir.
Q. From that station?
A. From the local station.
Q. There is a lot of stuff comes in there on what they call overhead billing?
188 A. So far as Indianapolis and Terre Haute is concerned.
Q. That means stuff coming from the Pennsylvania Lines east of Indianapolis, that is billed through to Indianapolis and destined not to be handled here at Indianapolis?
A. They don't see or handle that at all.
Q. The office here has nothing to do with that?
A. No sir.
Q. Now, in addition to these platform helpers and these clerical helpers, what do you have to furnish to that freight house in order to take care of this local stuff that is loaded in and out the cars and the platforms?
A. It requires a great deal of switching by the yard crews.
Q. Now, if you wanted to load some stuff from Indianapolis to Terre Haute, you would have to set the car in the freight house, wouldn't you?
A. Yes sir.
Q. It would take an engine to do that?
A. You would have to set that car out when it was loaded and take it into the train and take it to Terre Haute?
A. Yes sir.
Q. Where is the yard from which that car is moved?
A. The assembling yard is west of the Belt Crossing; about a mile and a half from the city.
Q. And to that yard or from that yard loaded cars to be handled over the platform here, are brought to the station, and loaded cars of freight that is handled over the platform are taken to that
189 yard to be sent on their way.
A. Yes sir.
Q. And that is done by a switch engine?
A. Yes sir.
Q. Now, does all that detail have to be gone through with on a through car?
A. No sir.
Q. On a through car?
A. No sir.
Q. What do you do with a through freight car?
A. The through freight traffic is delivered at the yard by the connecting line and switched into a train; if necessary it frequently comes in cuts so that very little switching is required; it is moved from the terminal yard to the next terminal in through service.
Q. And if we have freight for other lines, we switch it over to their yard and they assemble it and put it in their trains?
A. Yes.
Q. And as to all that kind of freight this platform force and a part of the clerical helpers have nothing to do?

A. That is right.

Q. What can you say, Mr. Downing, about the relative loading of cars with local and through freight?

A. The local cars are not, as a rule, loaded as heavily;
190 the tonnage is less per car, and the average tonnage is very much less, as it is distributed over the road.

Q. Can you give us any figures for that during any of the years we are considering. Take 1904, if you have it there? And give us the average loading of cars, local and through.

A. I have only an average of all cars. The average for all cars was 16.79 tons, in 1904.

Q. You have not estimated the average tons handled per car on a local freight? Have you got any estimate of what the locals handled in the way of loads per car, was?

A. No sir, I have not.

Q. I will get it in another way. You have, though, as I remember the number of cars handled per train?

A. Yes sir.

Q. What were the number of cars handled by through trains, freight trains, in each train in 1904?

A. In through trains, the average number of loaded cars in through trains was 15.66 cars; and in local trains, it was 10.23 cars.

Q. What was it in 1905?

A. The average number of loaded cars in 1905, in local trains was 11.17; in through trains, 18.38.

Q. Well, what was it in 1906?

A. In 1906, the average cars in local freight trains was 10.98 cars; and in through trains 19.61.

191 Q. Now, these figures relate to the line between here and East St. Louis, do they? For 1904, I assume, they refer to the line between here and the Illinois State Line?

A. Yes sir, and for 1905 and 1906, they refer only to the line between here and the Illinois State line.

Q. You have got the figures for that?

A. Yes sir; I picked them out.

Q. So that the number of loaded cars in a local freight train is quite an amount less than the amount hauled in the through freight, and, as you said before, the loading was less, but you could not tell how much less? Is that right?

A. Yes sir.

Q. What would you say, then, as to the effect it would have on the cost of handling local freight as compared with through freight? It would cost less for a less number of loads?

A. It would make the cost per unit very much higher on local freight.

Q. If you have a car lightly loaded, you have the dead weight of the car to haul anyway, don't you?

A. Yes.

Q. And if it is fully loaded, you are getting revenue on the capacity of the car, rather than on a fraction of the capacity of the car?

A. Yes sir, and taking the average ton loading per car, and ap-

plying it to the number of cars per train, we find that in
192 1904 the local freight trains only handled about 65 per cent. of the tonnage of the through trains. In other words, about 65 per cent. of the capacity of the locomotives.

Q. A less amount of work then was being done for quite an extra amount of cost?

A. Yes sir.

Q. In the shape of wages, fuel and station labor?

A. Yes sir.

Q. Mr. Downing, do you know of any way by which you can put those three items we have mentioned, for instance, into actual dollars and cents, and say how much more in a year the cost of handling local freight would be increased over the average per cent of operating expenses for all business?

A. Not accurately.

Q. We tried to do that, didn't we?

A. Yes sir.

Q. What you have said about the station work here at Indianapolis, the method of handling the business here, how does that apply, if at all, to the station of Terre Haute?

A. It is very similar. The same conditions exist.

Q. And at East St. Louis?

A. Yes sir.

Q. There is one thing at East St. Louis, however; isn't there, that there is no overhead billing there at all?

A. No sir.

193 Q. Now, take any other item you may think of; you may mention any other item you may think of that would tend to show that the cost of handling this local traffic is more than the average cost of handling all of the traffic over the road during the year? Do you remember of anything else that applies?

A. Would you include the switching to industrial sidings of local traffic?

Q. No, not on the basis we are proceeding now. We did have that at one time. You did have that at one time, but then it was figured on the theory of local freight that originated on the line of the road and went anywhere, and, of course, these industrial tracks would be put in then for the benefit of that local freight; but I don't think it has a bearing upon this proposition.

A. There is a greater wear and tear in freight equipment in handling local freight trains; the earning power of the locomotive and cars is less in local traffic than in through service. I don't think of any other item.

Q. Well, now, do you know, or can you think of any items that go to make up the cost of handling freight, wherein it costs less for the local freight than it does the through?

A. No sir, I cannot.

Q. But, you can enumerate these items where it costs more?

A. Yes.

Q. But there is not in any respect, so far as you know,
194 any economy in handling local freight, so far as expense is concerned, over through freight?
A. No sir.

Cross-examination.

Questions by Mr. KORBLY:

Q. Mr. Downing, local freight, as you understand that term, is freight that originates on the Vandalia line at any point between Indianapolis and East St. Louis and destined to any point, is that right?
A. Well, that was correct, according to the records that we used to keep.
Q. Is that correct according to the records that you keep now?
A. I don't know whether they keep any records now.
Q. When you were testifying a few minutes ago, about the cost of local traffic over the cost of through traffic, what was your understanding of the word local?
A. I had reference to the local trains and the through trains; what are classed as the local freight trains.
Q. What is your understanding of a local train?
A. A train which does the local business along the line of the road.
Q. And a through train is the one which carries the through business?
A. Carries through traffic and makes no stops for local
195 business.
Q. Now, the local train which stops at the various stations carries local freight, that is to say, freight originating along the line of the road and destined to any point? Is that the fact?
A. Not as a rule.
Q. Then, the local freight, the kind that you have been describing, carries domestic freight, that is, freight originating and terminating on the line in Indiana?
A. Yes sir, principally.
Q. Do you know what percentage of all the freight carried on the local freight train, plying between Indianapolis and Terre Haute, consists of domestic freight, and what per centage consists of foreign freight, that is to say, freight going outside of the State of Indiana?
A. No sir.
Q. A large per cent of that, though, is domestic?
A. I would say so, yes sir. I don't know where the freight originates, it comes to us as domestic freight.
Q. By "domestic" freight, I mean freight originating and terminating on your line of road, known as the Vandalia road, between Indianapolis and the Illinois State line, and including those points?
A. May I ask you would you consider freight as coming into

our freight house at Indianapolis as domestic freight? Am I
196 to understand that that freight may have originated in New York and come to us through wholesale houses, or otherwise, or by transfer team to our local freight house?

Q. Mr. Roney's distinction between local freight and foreign freight is: local freight, as he defines it, is freight originating on your line of road between Indianapolis and East St. Louis and destined to any point. Foreign freight is freight originating off your line of road and coming on to your line of road, and destined to any point between Indianapolis and East St. Louis, or those two points?

A. Yes sir.

Q. Now, domestic freight, as I understand the term, is the freight originating either at Indianapolis or in Indiana to the Illinois state line and destined to any point between those two points. That is domestic. Now, then, with those definitions clearly in your mind, what percentage will you say of the freight handled by the local freight trains plying between Indianapolis and the Illinois State line, what per cent of that freight is domestic freight and what per cent of it is foreign freight?

A. I can't say as to the percentage, but the larger proportion of freight handled on a local freight train is loaded in the cars at our freight house at the terminals and at the local points along the line. That is as near as I can answer your question.

Q. Is it over 75 per cent?

197 A. I don't know the percentage. I only know that the majority of the cars——

Q. (Interrupting.) Then it is an opinion on your part, then? You are not basing that statement on any facts?

A. Not on any figures.

Q. I say you are not basing your statement on any facts when you say that the larger proportion is domestic. You are guessing at it.

A. Well, if you wish, I will put it that way.

Q. When you were testifying about the cost of local freight trains, did you have in mind the freight that is destined to points beyond the state of Indiana?

A. I had no reference to any particular class of freight, but to the character of the trains?

Q. These local freight trains frequently pick up freight that is destined to some point beyond the state of Indiana, do they not?

A. Yes sir; carload freight.

Q. Also loads of freight, don't they?

A. Yes sir.

Q. Parcels, occasionally they pick up parcels, destined to points beyond the state of Indiana?

A. Yes sir.

Q. Now, with that in mind what proportion of the freight that is picked up by this local freight train is ever destined to some
198 point beyond the state of Indiana, if you know?

A. I don't know.

Q. What per cent would it bear to the entire amount of freight carried by your local freight trains?

A. I don't know.

Q. Is it more or less, in your opinion?

A. I couldn't answer that question.

Q. So when you were giving the cost of a local freight train over that of a through freight train by the increased pay of the engineer and the fireman and the wear and tear upon the engine and cars, and the other items that you have mentioned here, you did not have in mind the transportation of purely domestic freight, but you also had included interstate traffic?

A. I had no reference to the class of traffic at all.

Q. I say, you included interstate traffic?

A. I had reference only to the character of the train.

Q. Yes, but I say the train being a local train, as you understand the term, was hauling interstate traffic? Is not that a fact?

A. Yes sir.

Q. Now, you are unable to give the cost or apportion the cost of the local freight trains between interstate traffic and the domestic traffic, as we understand those terms?

A. I am unable to.

199 Q. What do you understand by a through train?

A. A train that carries through from one terminal to another without having to stop to do work at local stations. However, these trains do occasionally do some local work.

Q. That is to say, if there is a couple of cars over on the sidetracks at Brazil, or any point between here and Terre Haute, it may stop and pick up cars, if they are destined to some point beyond Terre Haute?

—. ——.

Q. Is there any way of estimating what proportion of freight originates at Indianapolis and all the points between here and the Illinois State line, which is purely domestic freight, as I have defined it, and what proportion of it is interstate traffic?

A. I presume you had that tonnage this morning, didn't you?

Q. We had the tonnage this morning of all freight originating on the line of the Vandalia Railroad Company, between Indianapolis and the Illinois state line, and including the two terminals, and we had the tonnage of all freight originating on the Vandalia Railroad at Indianapolis and destined to some point along the line of that road between here and the Illinois line?

A. Yes sir.

Q. Now, the point I make is, is there any way of ascertaining what proportion of the tonnage originating on the line between Indianapolis and the Illinois state line, is interstate traffic destined to some point beyond the state of ——.

200 A. Not that I know of.

Q. These waybills from which the information was gotten with reference to the tonnage originating on the road in Indiana would also tell you whether or not the freight was destined to some point beyond, wouldn't it?

A. It would, yes sir.
Q. It would tell you the tonnage also, wouldn't it?
A. Yes sir.
Q. And from that you could estimate the revenue, couldn't you?
A. Well, now, I am not familiar with the waybills; I couldn't say just what they contain.
Q. But, in your opinion, that information could be obtained?
A. I imagine similar information the waybills would have.
Q. Now, you say that all of the expenses of the stations between the terminals are charged directly to freight?
A. No sir.
Q. What proportion of them?
A. Well, it varies; approximately it varies about one-third of the labor charged to passenger and two-thirds to freight, although where there are men assigned directly to one or the other class of business, their expenses are charged directly to that class of business.
Q. And where you have only one man at the station?
A. We usually charge about one-third and two-thirds.
Q. That is he sells tickets for passengers and he looks after your telegraph instruments?
201 A. No sir, he does not look after the telegraph instruments.
Q. You do not have that, any more. You have the block system. But you charge one-third to passenger and two-thirds to the freight?
A. Yes sir, I think that is the way it is done now.
Q. At the terminals, how do you divide the expenses?
A. Well, the terminal charges, the terminal expenses as between passenger and freight are separated.
Q. Yes, that is, that portion of the expenses which is undistributed, the wear and tear on the track, and cost of maintenance of way and all that sort of thing, there is a certain portion of the expenses that you cannot distribute, or you can not localize, and that is distributed under all the other items which can be localized and which are charged to proper accounts, isn't that the fact?
A. Maintenance of Way Expense.
Q. Take that freight depot, how is the maintenance of that apportioned?
A. All repairs to that freight depot would be charged to the freight expense.
Q. You have a lot of clerks down there, haven't you, at the Indianapolis terminal?
A. Yes sir.
Q. You have a lot of freight handlers?
A. Yes sir.
202 Q. You have a superintendent of the freight house, the agent. Now, how do you divide that expense?
A. His expenses are all charged to freight.
Q. Now, with reference to the local freight and foreign freight, how do you divide it?
A. That can only be estimated; it cannot be separated accurately.
Q. Well, now, isn't it a fact that more service is required of your

clerks in looking after interstate traffic than is required of them to look after domestic traffic?

A. No sir, I would think not, as a rule. It may be at some particular place.

Q. Here, at Indianapolis, for instance?

A. I don't think it is true here.

Q. Do you know how many clerks there are down there at the freight depot?

A. Not now; that is not under my jurisdiction.

Q. Well, then, your statement a few minutes ago was purely a guess, wasn't it?

A. I was basing it on the information I collected at the time we made this report.

Q. Well, you understand when I use the term domestic, I mean freight originating in Indianapolis and destined to some point along the line of your road between Indianapolis and the Illinois state line?

203 A. I don't know anything about that.

Q. You never made any inquiry about that, did you?

A. No sir.

Q. And you never attempted to collect any data or figures that would show the cost of transporting a ton of freight per mile between Indianapolis and the Illinois state line, purely domestic freight?

A. No sir.

Q. Now, isn't it a fact, Mr. Downing, that all of the figures about which you testified, have reference to interstate traffic more than they do to domestic traffic?

A. No sir.

Q. You can't separate the two, can you?

A. I testified to a great many figures that had no reference to the class of traffic, and I referred only to the character of the train. I presented no figures that referred to the class of traffic. I have not attempted to separate the domestic from the foreign or interstate, whichever you are pleased to call it.

Q. What does it cost to run a freight train per mile?

A. I don't know.

Q. You testified before the Railroad Commission of Indiana, did you not?

A. Yes sir.

Q. You gave an estimate before that Commission, did you not, as to what it cost?

A. No sir.

204 Q. You testified, did you not, before the Indiana Railroad Commission, that taking all the cost of a local train, and by a local freight train, we specifically limit it to a freight train plying between Indianapolis and Terre Haute, charging its portion of the general expense, the salary of the president and all the chief officers, its proportion of the taxes and insurance, its proportion of the wear and tear, and all of the undistributed charges to be made against that train, and then charging directly the things that might be charged to it, like fuel, and the fireman, and the brakeman, and

the conductor, and the various charges incurred by the agents and stations between here and Terre Haute, didn't you testify before the Indiana Railroad Commission, as to what it would cost per train mile?

A. I made a figure based on the analysis, as you have described it, as to the cost of running a local and a through train, localizing certain items, and dividing the undistributed items on a fixed basis, but I did not say that that was the cost of running the train.

By Mr. WILLIAMS:

Q. And that was based on the cost per train mile and not per ton mile?

A. Per train mile.

By Mr. KORBLY:

Q. It was the average cost per train ton per mile of
205 the local freight traffic, as near as you could get at it?

A. Yes sir.

Q. And what was that in your opinion, Mr. Downing, in 1904, 1905 and 1906?

A. I have not any figures for 1905 and 1906. I have only the figures that I gave you in 1904.

By Mr. WILLIAMS:

Q. Those are the figures upon which your testimony before the Commission was based?

A. Yes sir.

By Mr. KORBLY:

Q. Well, what do you think it was in 1904?

A. The cost per train mile in 1904, arrived at as you have described it, was local, $2.75; the through train was $1.93.

Q. Now, what was the cost, in your opinion, in 1906?

A. I haven't any figures in 1905 and 1906.

Q. Well, from the other data that you have at hand and about which you have testified, do you think the cost materially increased in 1905 and 1906, over 1904?

A. There would be a material difference; I couldn't say how much.

Q. A material difference?

A. Judging from the difference between 1901 and 1904, I would say there was quite a difference, with a slight variation in
206 wages and fuel.

Q. Well, now, you have already testified as to the variation in wages, Mr. Downing?

A. But I have not any figures as to the undistributed expenses.

Q. According to your testimony, a local engineer got 25 cents more a trip in 1906, than he got in 1904: and a local fireman got 10 cents more in 1906 than he got in 1904. With that exception there was no difference in the cost of the wages?

A. But in arriving at the cost per train mile it would be neces-

ary to have all of the items of expenses, the undistributed expenses would have to be apportioned between through and local freight. have no figures for that.

Q. Well, the ratio of expense in 1905 and 1906 was low, wasn't it?

A. I have no recollection of the expenses in 1905 and 1906.

Q. Transportation has been made cheaper, has it not, in the last wenty five years by improvements?

A. Not according to my experience. I have seen rather the reerse.

Q. The increased capacity of the engines has cheapened transporation, hasn't it, and in its hauling capacity it has cheapepned transportation?

A. I can't say as to that. That is the theory.

Q. How long have you been connected with the railroad
07 business?

A. 23 years.

Q. How long have you been at the head of a department in the ailroad business?

A. Seven years.

Q. What did you do prior to your acting as superintendent of he road?

A. I was Engineer of Maintenance of Way.

Q. How long were you Engineer of Maintenance of Way?

A. Ten years.

Q. What did you do prior to that?

A. I was in the engineer corps.

Q. Seventeen years since you left the engineering corps? That ould take you back to about 1890?

A. 1891.

Q. Now, what were you paying for rails, if you remember, in 891?

A. That is too far back for me.

Q. Well, isn't it a fact now that rails are heavier now and comaratively cheaper than they were then?

A. They are heavier.

Q. And comparatively cheaper?

A. No sir, I don't think so.

Q. Isn't it also true with reference to your cars, that they are eavier and their capacity has sometimes doubled and trebled over he cars you had in 1900?

A. Yes, they are heavier and of larger capacity.

08 Q. And your engines also are much heavier?

A. Yes sir.

Q. And can haul heavier loads?

A. Yes sir.

Q. Now, doesn't that, and didn't that, tend to decrease the cost f transportation of freight?

A. Only so far as those particular items are concerned. All items f cost have gone up very considerably within the last few years.

Q. Now, to come to the question of local freight and the cost of aintaining your freight house at a terminal, I don't believe that

you stated what percentage of the expense was chargeable to local freight and what expense to the through?

A. We estimate that arbitrarily at 50 per cent. I don't know actually what it would be.

Q. By local freight there, you mean freight that is intra-state traffic, don't you?

A. Freight handled by local freight trains over the platforms.

Q. I know, but isn't it a fact that freight that is handled over the platform is sometimes destined for interstate traffic?

A. Yes sir.

Q. And isn't it a fact that lots of that freight handled over the freight platform down there at the Vandalia freight house
209 is destined to interstate traffic?

A. I don't know.

Q. You don't know that?

A. No sir.

Q. There are only two local freight trains plying between here and Terre Haute?

A. Yes sir.

Q. One train starts from Indianapolis and goes to Terre Haute, and one starts from Terre Haute and comes to Indianapolis every working day?

A. Every day, except Sunday and holidays.

Q. If there is any freight destined to a point in the State of Indiana beyond Terre Haute, why that freight is transferred at Terre Haute and transferred to another freight train going to Effingham or else where?

A. Yes sir, if it is a local shipment.

Q. And that existed in 1904, 1905 and 1906?

A. Yes sir.

Q. Mr. Downing, isn't it a fact that $2.75, which is the cost per train mile on local freight trains, existed in 1906 and 1905, the same as it did in 1904?

A. I don't know.

Mr. WILLIAMS: He has already stated that the figures he gave were for 1904.

Mr. KORBLY: No, he didn't limit it to 1904; he testified
210 before the Indiana Railroad Commission and gave it as $2.75 for three years, and did not limit to 1904.

The WITNESS: No sir, I gave whatever figures for each year I had; I had two other years at that time, and I think I gave the different figures for each of those years.

Q. Well, if you testified at the time this examination was taken that it cost $2.75 per train mile, regardless of the number of cars that were in the train, you would say that that is approximately correct, wouldn't you?

A. That was correct only for that year, and on the basis of the analysis made and which included a certain number of cars, fuel consumption and wages.

Q. What?

A. I say that was true only for that one year, which was based upon the analysis made, showing certain wages, fuel and the number of cars, and it might not be the same for another year.

Q. I will ask you if you didn't testify in your testimony before the Railroad Commission in answer to a question put to you by me, if you didn't make this answer for response; "$2.75 is the cost per train mile, regardless of the number of cars in the train; it is the cost per train mile; multiply it by 80, and you get the cost from Indianapolis to the state line of one train"?

A. If I did, I had particular reference to 1904 analysis.

Q. And if in response to this question you didn't make answer as follows; "Does that include the salary and everything else? Answer; That includes a portion of all the expenses"?

A. Yes sir.

Q. Could you ascertain for us the cost per train mile for the year 1905, of local freight trains?

A. I don't think I could.

Q. Could you for the year 1906?

A. I doubt it, for the reason that the system of keeping records has changed, so that it would be almost impossible to do it.

Re-examination.

Questions by Mr. WILLIAMS:

Q. These so-called local freight- between Indianapolis and Terre Haute are run for the accommodation of the business between those two places, aren't they, Mr. Downing?

A. Yes sir.

Q. And in order to give some idea of the time that it takes to handle the business that is tendered to them at these intermediate stations, what schedule do you allow them?

A. Six miles an hour.

Q. How many hours?

A. Twelve hours.

Q. And what time are your through freight trains allowed for making the same distance?

A. Seven hours.

Q. Now, if a lot of groceries, dry goods, shoes or anything else, less than a carload of freight, was brought and tendered for shipment to Bridgeport, Plainfield, Knightsville, at Indianapolis to our freight house here, on what train would that be handled?

A. That would be handled on the local freight train.

Q. And if anybody at Knightsville or Bridgeport or Ben Davis wanted to ship anything, I don't care where, to Indianapolis or elsewhere, what train would handle that?

A. It would be picked up by the local train.

Q. The work that your through trains do in the way of picking up business between Indianapolis and Terre Haute is done for one purpose, at any rate, of relieving the local train of overwork?

A. Yes sir.

Q. And also to expedite the movement of freight?

A. To expedite the movement.

Q. If you have a couple of cars of stock at Amo, or any intermediate point destined to Indianapolis proper and you could save time on your local freights, and handle it and without over-
213 working your men too much, you would pick it up with your through train?

A. Yes sir.

Q. And handle the stock promptly and save your local train from being overworked?

A. Yes sir.

Q. Now, the pay that you give your train men is utterly regardless of what stuff the train hauls?

A. Yes sir.

Q. And you have not attempted to distribute in any way what you pay them as against the stuff that is in the train they are handling have you?

A. No sir.

Q. Now when it comes to estimate, as you did for the year 1904, the relative cost of hauling this local freight per train mile, as against the cost of hauling through freight trains per train mile, isn't it true that we started on that kind of a basis? Our annual report showed what the average expense per train mile of handling all freight trains was?

A. Yes?

Q. Now, we took that as the basis, didn't we?

A. Yes sir.

Q. Then we said there are certain items connected with the movement of a local freight, wages, fuel, and station labor, that ought properly to be chargeable against that local freight; but how
213½ many other things do you have to take into consideration, Mr. Downing, and what do you have to find out before you could reach any definite comparison, as between the average rate that the annual report gave for every freight train per mile, and to divide the expense as to the relative costs as between the local and through freights per mile?

A. We had to take into consideration all items of expense.

Q. And distribute them as between those two services some way, don't you?

A. Yes sir.

Q. Now, how do you distribute them?

A. They were distributed largely upon the train mile basis; some of them are distributed on the revenue basis.

Q. Then you said here is a certain item of expenditure that is charged to freight service. Now, I will allot so much of that to the local freight as the number of miles that the local freight train makes bears to the number of miles of all the freight trains, isn't that it?

A. Yes sir.

Q. The other items you distributed on the revenue basis. Do you remember any items on the revenue basis, or was it all on mileage? I don't recall?

A. Well, the undistributed expenses were apportioned on the train mile basis, yes sir.

214 Q. Well, now, by undistributed expenses you mean that you had to take all of the operating expenses of the company for the year 1904 and distribute them as well as you could and estimate the actual basis as between local and through freight trains?

A. Yes.

Q. And it was quite a complicated and quite a tedious calculation, wasn't it?

A. Yes.

Q. And not entirely satisfactory when you got through, was it? I know it was not to me.

A. It was not very.

Q. Now, I did not ask you to do that for 1905, or 1906?

A. No sir.

Q. And you have not done it?

A. No sir.

Q. And you have none of those figures which you did have to make up the computation for 1904?

A. No sir, I have not, except the fuel and the wages.

Q. I will ask you to state, Mr. Downing, if in the figures and calculations that were made by yourself and jointly with me, and as to the results which were accomplished and to which you testified before the Railroad Commission, if all of that work was not done in an attempt to ascertain, if we could, the actual or approximate cost of handling this local stuff between Indianapolis and the Illinois state line? Wasn't that our purpose?

215 A. Yes sir.

Q. And didn't you try to do it first on the train mile basis, the expense per train mile?

A. Yes.

Q. And then didn't we try it upon the expense per ton per mile?

A. Yes sir.

Q. And then didn't we always come blank up against the proposition that we could not state mathematically how much the increase of expense would increase the general average operating expenses for the year?

A. Yes sir.

Q. We could not do it in a mathematical statement that would be mathematically accurate.

A. That is true.

Q. For, in the general operating expenses, for the year 1904, were in round numbers 56 percent. That is the fact. We will assume it 76.4 per cent. Now, there was a ratio that the total expense, operating expense of the company for all items, bore to the entire earnings of the company from all sources?

A. Yes.

Q. And isn't it true that what we were trying to get at was, how much that expense would be increased, stated accurately, as far as local and through freight was concerned, as against

216 through traffic?

A. Yes sir.

Q. So that we could say to the Commission that on account of these various items that we know cost more for local than for through, business, the per cent of local to through would be 90 per cent instead of 76 percent?

A. Yes sir.

Q. And we couldn't do it, could we?

A. We could not.

Q. What was the best we could do, do you remember? It was to state, was it not, that if all of the freight on the road had been handled on the basis of this increased cost as to local freight, that the expenses would have been increased 14 per cent?

A. Yes, 14.6 per cent.

Q. And that makes the local expense 90 per cent. instead of 76 per cent, but neither of us were in love with that conclusion, because it did not seem of any particular value in determining the actual question we were trying to get at, namely, the cost of handling local traffic as compared with through. Now, Mr. Downing, the expense of running this freight house here. When we come to platform labor and all the other expense of running this freight house here, and you are trying to get the cost of handling that freight at that freight house, in and out, over the platform, it doesn't make a bit of difference, does it, where that freight comes
217 from and where it goes to, so far as the cost of handling it is concerned? It is so much per ton, whether it is all local or through freight? You get the expense of handling that stuff, no matter where it comes from?

A. Yes sir.

Q. And, it costs just as much to handle a ton of stuff that comes from an Indianapolis grocery house, as it does to handle a ton of that stuff that comes in from some other place, just so it is handled over the platform? Isn't that true?

A. Yes sir.

Recross-examination.

Questions by Mr. KORBLY:

Q. But, Mr. Downing, if you were desirous of ascertaining the relative cost of handling certain freight, like groceries and dry goods, and going over the platform at this freight depot, destined to some point along the line of your road, between Indianapolis and the Illinois state line, as compared to the entire cost of operating your plant down there, it would be quite material to know what portion of it is intended for the points between Indianapolis and the Illinois state line, and what parts are destined for points beyond the state of Indiana, wouldn't it?

A. I don't know as I understand your question, the first
218 part of it.

Q. Mr. Williams was asking about the cost of handling freight at the depot.

A. Yes sir.

Q. And no matter where the freight came from, it cost so much per ton to handle it, and you said, yes, in answer to that question.

A. Yes.

Q. Now, we are considering the cost of handling domestic freight, freight originating in Indianapolis and destined to some point along your line of road between Indianapolis and the Illinois state line. Now, if you knew the entire cost of handling freight over the platform at your depot in Indianapolis, you would not say that that would be the cost of handling the domestic freight, would you?

A. I would say it is the average cost. It would be the average cost, would it not?

Q. Now, if you want to find out what proportion of the expense at the station should be charged to domestic traffic, and what proportion should be charged to interstate traffic, it would be very material to know how much interstate traffic went out of Indianapolis, wouldn't it, over the platform?

A. Yes sir, you would have to pro-rate it. There are a great many undistributed items of cost to pro-rate.

219 Q. Now, is there any way of ascertaining that fact?

A. Not that I know of, for anything that has passed.

Q. For the years 1904, 1905 and 1906?

A. The figures showed the average cost of all freight. There was no separation made of the local or domestic, as compared with the interstate.

Q. No, but if a certain percentage of that freight down there was for domestic shipment, and another percent was for interstate shipment, in figuring on the percentages, you would have a very difficult time in arriving at what it cost?

A. You get at the figure on the percentage basis.

Q. But all we have to know now is the tonnage of freight destined to points beyond the state line. That could be ascertained, couldn't it? In other words, these waybills which were testified to this morning by Mr. Buchanan are at Terre Haute, and it is possible for the railroad company to ascertain almost to a certainty the number of pounds of freight that goes over the platform at the depot and is destined to some point beyond the state line? Isn't that a fact?

A. I don't know.

(Witness Excused.)

220 D. F. SAUR, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. WILLIAMS:

Q. State your name please?

A. D. F. Saur.

Q. What is your occupation now, Mr. Saur?

A. Chief Claim Clerk, in the General Freight Office of the Vandalia Railroad, St. Louis.

Q. In what capacity, have you been employed by the Railroad

Company and its predecessors, the Terre Haute and Indianapolis Railroad Company?

A. Various capacities.

Q. Just tell us some of them that are nearest to your present occupation?

A. Prior to my present employment, I had the title of Special Agent.

Q. What were you doing as Special Agent, among other things?

A. Collecting and tabulating statistics.

Q. Of expense accounts, among other things?

A. Yes sir.

Q. And you have been freight agent at Effingham?

A. Yes; prior to that freight agent and yardmaster.

Q. When you were engaged as special agent in analysing expenses, did your duties take you to analyze expenses of the
221 Indianapolis freight station here?

A. Yes sir.

Q. And for what year did you examine that, Mr. Saur?

A. 1905.

Q. Now, I want you to give as briefly as you can, the result of that analysis, and you can explain how you made it up. First, did you ascertain through the investigation you made of the operation of that station, what it costs per ton to handle the freight over the platform at that station? Did you make an estimate of that?

A. Yes sir.

Q. And what was it, not in detail; just give me the gross amount.

A. The total cost per ton for handling platform freight at Indianapolis freight station for the calendar year 1905 was 70.4 cents.

Q. That was the cost per ton?

A. Yes sir; that was the estimated cost per ton, as near as I could figure it, by taking items that I could be reasonably certain of obtaining something like an accurate proportion.

Q. Now, let us get at the way you did that. You found first the total tons of freight handled over the platform there during the year, did you?

A. Yes sir.

222 Q. What was it?

A. 58,866 tons of freight handled over the platform.

Q. Now, you found the number of cars that were handled in and out of the freight house during the year, did you?

A. Estimated, yes.

Q. Well, give us the manner in which you estimated that?

A. Thirteen inbound and twenty-four outbound, and five eastbound per day; total 42; or 12,852 during the year.

Q. Now, taking that number of cars in and out of the freight house and comparing it with the number of tons handled over the platform that year, what was the average load per car, average tons per car?

A. 4.6 tons.

Q. How did you get this estimate of thirteen inbound, twenty-four out and east bound five?

A. That was the result of a conference with the agent and yardmaster.

Q. Well, they knew what their switch engines put in there and took out each day?

A. Yes.

Q. And they did not keep any specific record of them, as I understand?

A. No sir.

Q. From what you have ascertained, do you think that is as fair an estimate as could be made?

223 A. Yes.

Q. Now, coming to the expenses, what did you find there in the items of expenditure? The office force, for one thing?

A. Yes.

Q. How much did that cost for the year?

A. $16,709.90.

Q. And how much did the platform force cost for the year?

A. $13,850.45.

Q. Now, that represents the aggregate of the payrolls for the year, showing the wages and salaries paid to the office force and platform force?

A. Yes sir.

Q. How much did that represent per ton on the tonnage handled over the freight house platform? In separate items, how much did the office force amount to to charge against the tonnage

A. 28.4 cents per ton, for office force, and 23.5 cents per ton, for platform force; a total of 51.9 cents per ton for the entire freight house force.

Q. Now, what other items did you consider as being items of expense properly chargeable against that station?

A. A portion of the Maintenance of Way and Structures expense.

Q. And how did you get at the proportion of this Maintenance of Way and Structures expenses that ought to be charged against that freight house?

224 A. I found the average cost per mile of track within the Indianapolis terminal division, and I divided the cost of maintaining the main track as between the total cars in and out of Indianapolis in passenger and freight trains; and I charged the cost of maintaining the sidetracks to freight service; and on that basis the portion of maintenance expense for the Indianapolis Terminal Division chargeable to freight service was found to be 94.9 per cent of the total maintenance expense; and of the total charge to the Maintenance of Way and Structures account, expense of interlocking plants and signals, I charged to the freight house a proportion of 8.8 per cent of 94.9 per cent, the 8.8 per cent representing the per cent of freight cars to the total cars.

Q. Handled at the terminal?

A. Yes sir. For two items of Maintenance of Equipment expenses, namely locomotive repairs and depreciations, I found the estimated per cent of engine hours required for freight house switching, by taking the total number of engines and crews, and the total

hours worked per day, for all engines, and estimating that for freight house switching which required three-fourths of an engine, or one engine seven and one-half hours. Of the total cars in and out of Indianapolis 79.6 per cent were handled in freight trains; therefore, for those two items, I used for the freight house proportion
225 .2 per cent of 79.6 per cent of the total charge to those two accounts. For 11, Conducting Transportation expense account, I used the car basis, and for station supplies, I used 100 per cent of the charge, for the reason that there was only charged into that account the cost of station supplies for the station. And for some record clerks, I used freight car basis.

Q. Well, all of the other items, under Conducting Transportation, down to and including policemen, you charged on the freight car percentage?

A. Yes sir.

Q. And took 8.8 of that per cent?

A. Yes.

Q. Now, here is an item under Conducting Transportation, of interest upon engines?

A. Yes sir, I used the engine basis for that item.

Q. You took 6.2 of the 79 per cent on the car basis?

A. Yes sir.

Q. Then, the taxes, you estimated, did you, from what I gave you?

A. Yes sir.

Q. What was that?

A. 2.13 per cent on a valuation of $7,000.

Q. Where did you get that valuation of $7,000?

A. You gave it to me.

Q. As the valuation of what?

A. The freight house.

Q. Of the freight house, alone?

226 A. My recollection is it was intended to be the freight house.

Q. And that was the valuation that was put on it by the State Board of Equalization?

A. As I recollect it, yes sir. Then I took all of those items and put them on the basis that I figured out for track maintenance and arrived at the additional amount of 18.5 cents per ton, to be added to the 50.9 cents per ton.

Q. Represented by the payroll and labor?

A. Represented by the station payroll.

Q. That made up the total of your 70.4 cents per ton?

A. Yes sir, counting only such items as I felt fairly estimated.

Q. There were a number of items, Mr. Saur, were there not, which you could not localize specifically to be satisfactory to yourself?

A. Yes sir.

Q. As an illustration, you may mention some of them that did not go into the computation, but were excluded? Do you remember any of them?

A. Yes, the cost of switching into and out of the freight station,

the trackage cost paid to the Indianapolis Union Railway, as I recollect it.

Q. Now, right there; our tracks stop at the center of Capitol Avenue?

227 A. Yes sir.

Q. In switching in and out of the freight house, we use the track of the Union Railway Company from the center of Capitol Avenue?

A. Yes sir.

Q. And whatever we pay the Union Railway Company, for that trackage, you did not include in your estimate as chargeable against the freight?

A. No sir.

Q. Now, you did not charge anything for superintendence, for instance, nor for tools, machinery, shop or watchmen?

A. No sir, the other general items, were Maintenance of Equipment expense.

Q. You excluded the items I mentioned?

A. Didn't count them.

Q. Now, without mentioning a number of other items which you did not take into consideration, I will ask you if your testimony as to the estimate of 70.4 cents per ton, is at least not too much? Is it reasonably low, as an estimate?

A. Yes sir.

Q. Now, is there any substantial difference between the conditions at this freight house here and that one at Terre Haute, and the one at East St. Louis, as to the method of handling the business and doing the business and the expenses connected with it?

A. Not materially, whatever.

Q. Did you ever analyze the Terre Haute freight house?

228 A. No sir.

Q. What would you say as to the average expense there? Would it approximate substantially the same as it did here?

A. I should think very nearly.

Q. There would not be any material difference in cost?

A. I know of no reason for a wide difference.

Q. At East St. Louis, would it be the same way; would it or would it not?

A. I wouldn't think there would be a wide difference in their wages in Indiana; the valuation of the property may be, and some items of expense, would be different, which might make a little different result, but it is not materially different.

Q. Now, at East St. Louis, you had occasion there to make an estimate of how much of this charge for clerical work of the station ought to be justly charged against the platform business, and that which did not come over and across the platform?

A. Yes sir.

Q. How did you make that estimate?

A. On a basis of expense bills and waybills issued. I calculated for each inbound shipment there was what is known as an expense bill issued.

Q. That showed the freight charges to be collected?

A. Yes sir, and for each outbound shipment there was a waybill issued. In addition to the expense bills and waybills, certain

229 other clerical labor necessary in connection with handling both the inbound and outbound business, and a careful estimate by the agent at that point, led me to believe that the total cost for clerical labor for handling inbound business was perhaps 25 per cent in excess of the total cost of clerical labor for waybills for outbound business, and on that basis I made a calculation which eliminated, or was intended to eliminate, the cost of handling carload business from the total cost of operating the station, being a more nearly accurately estimated cost for handling strictly platform freight.

Q. And what proportion of the platform clerical expense did you finally conclude would be justly chargeable against the freight that was handled over the platform?

A. About 90 per cent.

Q. Leaving 10 per cent to represent the clerical expense that would take care of the carload business that was handled on track, and did not pass through the freight house?

A. Yes sir.

Q. Now, Mr. Saur, have you the statement there?

A. Yes.

Q. Is this the one from which you testified

A. Yes sir.

Q. Now, will you please hand the detailed statement, concerning which you testified about the expense of the Indianapolis Freight House here, to the Stenographer, and let him make it an

230 exhibit?

A. I will do so.

The statement prepared by Mr. Saur was admitted in evidence, marked Exhibit No. 3, and the same is in the words and figures, following, to-wit:

231 Ex. 3.

St. Louis Division, Vandalia Railroad.

Statement Showing Estimated Cost per Ton for Handling Platform Freight at Indianapolis Freight Station, Calendar Year, 1905.

Total cars in and out of Indianapolis in passenger trains..	37,415
" " " " " " " " freight " ..	145,998
Per cents, passenger 20.4%—freight 79.6%.	
Estimate of cars per day in and out of freight house, inbound 13, outbound 24, east-bound 5, total.....	42
Per year	12,852
Percent of freight house cars of total cars.....	8.8%
Engines and crews working in yard, 6 day, 4 night, total..	10
Hours per day work by all engines.....	104

Average hours per day per engine		10.4
Hours worked per day by freight-house engine		10
Required for freight-house switching, ¾ engine per day, hours		7.5
Per cent of engine hours required for freight-house switching of total		6.2%
Miles of track in Indianapolis Terminal Division,		
First main	2.8	miles
Second "	2.24	"
Siding	16.4	"
Dividing cost for maintenance of main track on car basis and charging cost of maintenance of sidings to freight the % of passenger cost found to be		5.1%
Freight		94.9%
Total tons of freight handled over platform during the year 1905		58,866
Average tons per car		4.6
Expense bills issued		95,131
Way-bills issued		68,400

Cost per Ton.

	Total cost.	Cost per ton.
Office force	$16,709.90	28.4 cts.
Platform force	13,850.45	23.5 "
Total	30,560.35	51.9 "

Cost per Ton for Additional Expenses.

Account.	Total charge.	Basis of division.	Freight house proportion.
M. of W. & S. except I. P. & S.	$19,565.06	8.8% of 94.9%	$1,633.91
M. of E. Loco. repairs	16,932.10	6.2% of 79.6%	846.60
Depreciation	5,082.01	6.2% of 79.6%	254.10
C. T. Superintendent	2,692.39	8.8% of 79.6%	189.46
Station supplies	587.91	100%	587.91
Yard supervision, Rec. Clks.	1,302.10	8.8%	114.58
" " Other	12,213.28	8.8% of 79.6%	859.76
Yardmen	24,421.37	8.8% of 79.6%	1,719.25
Yard eng. & firemen	13,826.31	8.8% of 79.6%	973.36
Yard loco. fuel	18,712.77	8.8% of 79.6%	1,317.36
Enginehouse-men	3,326.52	8.8% of 79.6%	232.85
Fuel Sta. Operation	2,177.72	8.8% of 79.6%	152.44
Loco. water-supply	980.43	8.8% of 79.6%	68.63
Loco. stores	577.13	8.8% of 79.6%	40.40
Loco. other supplies	622.21	8.8% of 79.6%	43.55
Policemen	2,760.67	8.8% of 79.6%	193.24
Interest on engines	4,155.64	6.2% of 79.6%	207.78
Taxes, $7,000.00—$2.13	149.10	100%	149.10
Total	.....	.....	$9,584.28

Per ton, 16.2 cts. Add 51.9 cts. Total cost per ton 68.1 cts.

Counting repairs, depreciation, and interest at 6.2% of 94.9% and eleven items at 8.8% of 94.9% the total additional expenses for freight-house proportion will equal $10,899.22, which is equivalent to an average cost of 18.5 cts. per ton, to which add 51.9 cts., equals total cost 70.4 cts.

232 Cross-examination.

Questions by Mr. KORBLY:

Q. Mr. Saur, you were in the room when Mr. Roney gave his definition of local traffic and through traffic, or interstate traffic, were you not?

A. You mean here?

Q. Yes.

A. This morning?

Q. Yes.

A. I was busy figuring, I couldn't say that I had listened.

Q. What is your understanding of local traffic?

A. Of local traffic?

Q. Yes.

Well, pardon me, I will give you the definition that Mr. Roney gave this morning of local traffic and through traffic.

Mr. WILLLIAMS: You mean local freight and through freight?

Q. Yes, local freight and through freight. Local freight, as defined by Mr. Roney, this morning, is freight that originates on your line of road, between Indianapolis and East St. Louis, destined to any point, either on the line or off the line, and through traffic or foreign traffic, is traffic originating, or freight originating
233 off of the line of the road, no matter where, but destined to some point along the line of road between Indianapolis and the Illinois state line, and passing over it between here and East St. Louis. Now, domestic freight, as I use that term, is meant and used in the sense of freight originating on the line of the road between Indianapolis and the Illinois state line or other terminals, and destined to some point along the line of the road between Indianapolis and the Illinois state line, and particularly domestic-intrastate traffic. Now, in estimating the cost of handling freight at the Indianapolis terminal handled over the platform, can you, from the figures or detail that you have testified from a few minutes ago, and which has been made Exhibit No. 3, can you from the figures and facts stated on that, or from any other figures or facts that you may have had at your command, tell what it would cost per ton for the handling of purely domestic traffic, domestic freight?

A. At the Indianapolis Freight Station?

Q. Yes.

A. I couldn't say that there would be any difference in the cost per ton.

Q. Isn't it a fact that a greater charge, or at least the expense is greater for strictly interstate traffic, than it is for handling purely domestic traffic?

A. I wouldn't say that there would be any material difference so far as the Indianapolis station platform expense is con-
234 cerned.

Q. Now, there are certain bookkeepers and clerks at that station, are there not?

A. Yes sir.

Q. How many bookkeepers are there, and clerks?

A. I don't know.

Q. You knew at the time you prepared this table, didn't you?

A. Yes sir.

Q. How many were there at that time?

A. I don't remember.

Q. Do you know what proportion of labor of those clerks and what proportion of time of those clerks was given to foreign traffic, to interstate traffic, and what proportion of their time was given to domestic traffic or local traffic, as I understand that term?

A. No sir.

Q. You don't know that?

A. No sir.

Q. Did you know it at the time you prepared this tabulation?

A. No sir.

Q. In determining the cost of handling that freight down there, which is purely domestic, it would be absolutely necessary to know that, wouldn't it, in order to arrive at some correct estimate of the cost of handling purely domestic freight over the platform?

A. I don't see that it would make any material difference in the cost.

235 Q. If you have two kinds of freight and you want to arrive at the cost of the handling of that, take it all in all, you would then ascertain the cost or the expense of the clerks, the expenses of the platform men, the expense incurred by reason of taking in and putting out the cars, the wear and tear of the cars, all expenses that ought to be either directly or apportionately charged to that, including taxes and insurance, and everything else, and then you would arrive at a figure of the estimated cost of handling a ton of freight over the platform, wouldn't you?

A. Yes.

Q. But suppose that you have two distinct kinds of freight. Suppose you have one which is known as the domestic freight which is destined to some point along your line within the State of Indiana, and another kind of freight which is foreign freight, as we understand that term, or interstate traffic which is destined to some point beyond the state of Indiana. Now, you want to arrive at the cost of handling one kind of freight. Wouldn't it be necessary for you to know how much labor and how much time of your clerks down there is put on this kind of freight, and how much is devoted to every other kind of freight, before you could ascertain what the cost would be?

A. If there was any difference in the clerical or platform labor required for the two different kinds of freight, it would be necessary to make an apportionment.

236 Q. Yes, so that if your clerks at the freight depot give three fourths of their time to the billing and looking after the clerical work in the transportation of interstate traffic and foreign traffic, and only one-third of the time for the domestic traffic, then you would not charge it up the way you have done, would you?

A. It might affect the cost per ton of either.

Q. Well, I say you would not charge it up, as you have done, would you?

Mr. WILLIAMS: He has not attempted to distinguish between them.

Mr. KORBLY: I know he has not attempted to distinguish, and, therefore, I am going to distinguish for him.

Q. Isn't it a fact that the way you arrived at the cost of the clerks, you simply added up the salaries of the clerks, and divided it by the number of tons?

A. Yes sir.

Q. You had 58,000 tons passing over the platform, approximately?

A. Yes sir.

Q. And your salaries of the clerks was about $14,000 or $15,000, wasn't it?

A. The office force was $16,709.

237 Q. And you divided the $16,000 by the 58,000 tons, and that gave you the cost per ton to be charged against the clerks?

A. Average cost per ton, yes sir.

Q. Now, suppose a part of that tonnage was domestic tonnage, and a part of it was foreign tonnage—tonnage destined beyond the state of Indiana—and the services of the clerks which amounted to $16,000, three-fourths of that service was devoted to taking care of the foreign traffic, and only one-fourth of it was devoted to taking care of the domestic traffic. Then would you say that the cost of the clerks for domestic tonnage would be the result of the division of 58,000 into $16,000?

A. No sir.

Q. Now, do you know whether or not more service is required of a clerk in foreign traffic than it is in domestic traffic?

A. I don't know.

Q. You don't know anything about that *time?*

A. No sir.

Q. You just simply came over here as a sort of a statistician for the railroad company? And certain facts were given to you without making any distinction whatever as to the class of tonnage or traffic that you were to consider, except that you were told to consider all of it without making any distinction whatever, and find out the probable cost or estimated cost for handling a ton of

238 freight over the platform?

A. The average cost per ton, yes sir.

Q. Now, suppose these facts should exist with reference to the handling of the cars in and out of that station. You spoke about

handling something like sixteen cars a day going east. What did you mean by that?

Mr. WILLIAMS: Five cars.

Q. All right, five cars, going east. How many cars, going west?
A. 24 outbound and thirteen inbound.
Q. Now, then you spoke about cars going east. It cost something, didn't it, to load those cars, and to handle those cars?
A. Yes.
Q. And it cost something for the clerks to look after those cars coming in and going out? and looking after the freight going into them? and you added that to the per cent of the cost of handling the tonnage at the station, didn't you?
A. Yes sir, and added the tons.
Q. Now, that ought not to be considered in ascertaining the cost of handling a ton of freight for purely domestic destination on your line between Indianapolis and the Illinois state line, ought it? Suppose you wanted to arrive at the cost now of handling freight per ton over the platform at this freight station here, the cost
239 of handling that per ton for purely domestic traffic destined to some point between Indianapolis and the Illinois state line. That is what you are driving at now. Would you consider the cost of loading cars and the handling of the cars to some point east, a legitimate charge against the domestic traffic which we are now considering?
A. Please read the question. I don't understand it.

Mr. WILLIAMS: Let him state what he means by that five cars east, and perhaps that will make it clear.
Mr. KORBLY: All right.

By Mr. WILLIAMS:

Q. What do you mean by that five cars eastbound?
A. Five cars eastbound, are the cars that the Vandalia Freight Agent loads destined to points on the Pan Handle Railway.
Q. And loaded with what kind of freight?
A. Merchandise.
Q. That came from where?
A. From the west?
Q. On our line?
A. Yes.
To save drayage and facilities for handling, some few solid cars are made up.
Q. But they are loaded entirely with freight that came
240 from our line and destined to some point east on the Pan Handle road?
A. Yes sir.
Q. And if you did not load the freight into the cars and deliver it to the Pan Handle Railway Company, you would have to deliver that by a transfer wagon?
A. Yes.

Q. And we would have to make that delivery if we did not load it into the cars?

A. Yes.

By Mr. KORBLY:

Q. There are five cars that were destined to eastern points loaded at the Indianapolis terminal over the platform?

A. And do you think that is legitimate expense to take into consideration to determine what it costs per ton for purely domestic traffic?

A. If you count in the tonnage, yes.

Q. I know; what tonnage did you take into consideration?

A. The tonnage that was loaded into those five cars.

Q. You did not take into consideration the tonnage between Indianapolis and the Illinois state line?

A. I took all the tonnage, and all the cars. I made no discrimination as to classes of traffic.

Q. How about the number of cars. As you made it here,
241 it was 145,998 cars coming into the City of Indianapolis, coming into this terminal, and that in and out of the freight depot down there, there was 12,852 cars handled. Now, isn't it a fact that the clerks at the terminal here are charged with the duty of looking after the 145,998 cars, a good portion of them?

A. Some clerks.

Q. Isn't their salaries added up into the salaries of clerks down there at the freight depot which you took into consideration in determining the cost per ton of handling this freight?

A. In the clerical cost at the freight house, there is included the clerical labor of clerks incident to the handling of these 12,852 cars into and out of the freight house.

Q. Yes, and those same clerks devote their time and are paid for the purpose of looking after the 145,998 cars, or a good portion of those cars, are they not?

A. I do not so understand it.

Q. Don't you understand that there are a great many cars loaded in and out of the freight depot down there that are not loaded by the platform workers, but are loaded directly by the shipper?

A. There are cars, yes.

Q. Do you know how many such cars there were in 1905?

A. No sir.

242 Q. Did you ascertain or attempt to ascertain in your figures here, how many such cars there were?

A. No sir.

Q. What percentage of the cars that came in and went out of that depot were loaded by the consignor directly without the intervention of the platform helpers?

A. I don't know.

Q. Do you know what percentage of cars are loaded outside of the depot which are looked after by the clerks in the office?

A. No sir.

Q. Did you take account of that?
A. No sir.
Q. Well, now, suppose that there are 50 cars loaded on the outside each day, on the sidetracks, along the sidetracks, south of the present depot, and suppose those cars are looked after by the clerks employed and paid at the freight depot, and the most of their time is devoted to the looking after of the loading and the handling of those cars, and a very small percentage of their time is devoted to the looking after the cars that are loaded by the freight handlers. Wouldn't that make some difference in the result of your estimate as to the cost of handling freight per ton over the platform?
A. Yes sir.
243 Q. It would make a material difference, wouldn't it?
A. I don't think a very material difference.
Q. Did you take into consideration the number of cars that were loaded on switches elsewhere in manufacturing plants and establishments and delivered to your freight house down there and taken care of by the clerks of that freight house?
A. I don't quite understand that question.
Q. Well, there are cars loaded at manufacturing establishments in the City of Indianapolis, or on private switches leading up to their plants. Now, there is some clerical labor in handling those cars, and taking the car out and putting it in the train so that it may go to its destination. Now, there is some clerical work necessary in the loading and the handling of that car, and the clerical work is done by the clerks at your freight depot. Now, did you take that into consideration in estimating the cost per ton of handling the freight over the depot platform?
A. No sir.
Q. How many clerks did you figure on in this estimate?
A. I don't remember those figures now.
Q. Have you any means of acquiring that data?
A. Yes sir.
Q. You simply took the total, did you?
A. Yes, the total expense.
244 Q. Who gave you those items?
A. I got the figures, the total expenses from different sources.
Q. From Mr. E. F. Graham, the Agent?
A. I got some information from him, yes sir.
Q. Who gave you the total of the salaries of the office force?
A. I believe Mr. Graham.
Q. Who gave you the total of the platform helpers' salaries?
A. I believe Mr. Graham.
Q. And who gave you the total of the tonnage?
A. Mr. Graham; either Mr. Graham, or the information was obtained from reports made by him to the Superintendent. I wouldn't be sure which now.
Q. Where did you get the cars per day worked by all the engines?
A. That was the result of a—I will not be sure now, exactly, where that information was obtained.

Q. How many engines, does it take, if you know, to handle the cars that are put in and taken out of that freight house per day?

A. That was estimated at three-fourths of an engine per day, or seven and a half hours. That was a careful estimate made by the yardmaster and me.

By Mr. WILLIAMS:

Q. Did you get the engine hours from the payrolls of the
245 engineers?

A. I think so.

Q. And that was kept by the Superintendent of Motive Power?

A. The engineers' rolls are kept by the Superintendent.

Q. And they would get it from the yard force?

A. Yes sir; I think I got that information from the rolls.

By Mr. KORBLY:

Q. Now, Mr. Saur, would it be possible for you to ascertain the cost of the expense of handling a ton of freight over the platform for purely domestic purposes, leaving out of consideration all expense incident to foreign traffic, and the expense that you charge in your estimate for the use of rails and tracks and other things that are used almost exclusively for foreign traffic, would it be possible for you to arrive at the cost of the expense of handling a ton of freight of purely domestic traffic on that basis?

A. I don't know.

Q. For instance, you have got here mileage of track in Indianapolis Terminal Division, first main, 2.8 miles; second main 2.24 miles; sidings, 16.4 miles. Now, would you say that that trackage, all of that trackage, would be necessary and be utilized in the transportation of purely domestic freight received at the freight depot at Indianapolis and destined to some point on the line between Indianapolis and the Illinois state line?

246 A. I don't know what portion or portions may be necessary to be used in the handling of such traffic.

Q. But in estimating the cost of handling freight per ton at the station down here it would be necessary to know what amount of that trackage it would be necessary to use, wouldn't it?

A. I should say that it would be necessary to make an apportionment; I don't know that it can be ascertained just which track or tracks would be used for any one kind of traffic.

Q. I will ask you if the principal part of that trackage enumerated in your statement, isn't used for the through traffic, or through carload cars?

A. I don't know.

Q. You didn't take into consideration that matter at all? You simply figured on all of the trackage at Indianapolis within the terminal, and figured from that?

A. Yes sir.

Q. And charged it to platform expense?

A. A portion of it.

By Mr. WILLIAMS:

Q. You apportioned the expenses instead of apportioning the racks, didn't you?
A. That is it.

47 By Mr. KORBLY:

Q. You apportioned that 37,415 passenger cars and 145,998 reight cars, and in that way you apportioned what portion should e charged to the platform and what portion should be charged to he passenger, on account of the wear and tear on the track?
A. I didn't quite catch that question.
Q. The total passenger cars in and out of Indianapolis, you have 7,415?
A. Yes sir.
Q. And then you say the total freight cars were 145,998?
A. Yes sir.
Q. And the percent of the passenger cars to the total number of ars is 20.4 per cent, and the freight is 79.6 per cent?
A. Yes sir.
Q. Now, isn't it a fact that you took that into consideration in nding out what portion of the maintenance of the track of the ndianapolis terminal should be charged to the freight? and what ortion should — charged to the passenger?
A. On some of the expenses.
Q. And with that sort of a basis, you finally made a charge that hould be made against the handling of freight over the platform, idn't you?
A. I made an approximate charge.
Q. Now, suppose most of that trackage is used by through freight and not domestic freight. Would you think it would be
48 fair to charge the maintenance of that track which is not used for domestic traffic and the handling of domestic traffic, o the cost of handling freight over the platform?
A. I don't know how you would discriminate.

(Witness Excused.)

Mr. WILLIAMS: I want to show the valuation of the State Board f Equalization for this property for these three years, and then, I hink that is the end of our case.
The MASTER: When shall we go on?
Mr. WILLIAMS: I am perfectly willing to go on tomorrow. I ould not like to be here Thursday, as I have an engagement Thurs- ay. I will accommodate myself to the pleasure of these gentlemen r the Master.

Adjourned until tomorrow morning at ten o'clock.

49 WEDNESDAY, *September* 9, 1908—10 o'clock a. m.

The hearing was resumed before the Master.
Present: The same as on yesterday.

The MASTER: Anything more, Mr. Williams?

Mr. WILLIAMS: Nothing more, but I would like to have it understood that after I read the record that if I find that I have omitted anything, I can supply it.

Mr. KORBLY: We can have that understanding on both sides.

Mr. WILLIAMS: All right.

Mr. KORBLY: We would like to have the testimony that was given by Mr. Hodgdon before the Indiana Railroad Commission in this same matter, in the matter in which the rates were adopted by the Railroad Commission, we would like to have that testimony admitted here as a part of the evidence in this case, the testimony in this case. Have you any objections?

Mr. WILLIAMS: No, I will not agree to that. In the first
250 place, I don't think it is at all material or competent under the issues. In the next place, there is such a mass of it that I think it better to have the witness.

Mr. KORBLY: Of course, we will want Mr. Hodgdon here, and that will avoid the necessity of his coming here. Of course, if the testimony is incompetent, it may go in and you will reserve your objection as to its scope.

Mr. WILLIAMS: I will not agree to it.

Defendant's Evidence.

EDWARD F. GRAHAM, a witness called on behalf of the Defendant, being first duly sworn, testified as follows, to-wit:

Direct examination.

Questions by Mr. KORBLY:

Q. Please state your name.

A. Edward F. Graham.

Q. Where do you reside, Mr. Graham?

A. Indianapolis.

251 Q. And what is your present position or occupation?

A. In the capacity of freight agent.

Q. Of the Vandalia Railroad?

A. Of the Vandalia Railroad.

Q. You have your offices on the corner of Capital Avenue and the Vandalia tracks?

A. Yes sir, in the freight depot.

Q. As Freight Agent, what are your duties, Mr. Graham?

A. I have general supervision of the matters connected with the freight station, the handling of the freight, both in and out of the station.

Q. You have under your control all of the employés connected with the freight station?

A. Directly connected with the freight station, yes sir.

Q. You have under your control the checkers and the freight handlers and the clerks, and the helpers around there generally?

A. Yes sir.

Q. You have control of the records of the number of cars that

come into Indianapolis and the number of cars that go out of Indianapolis of freight, at that station?

A. In so far as they have connection with the freight station proper.

Q. Yes, in so far as it is not through freight, that is freight that is billed over this office and goes around on the Belt railroad?

A. That, of course, we don't have anything to do with.

252 Q. But the other cars, you do have to do with?

A. Yes sir.

Q. How long have you been freight agent, Mr. Graham?

A. I have been in the capacity of agent since April 1902.

Q. That is, Freight Agent here in Indianapolis?

A. Yes sir.

Q. You have had charge of this office and of these men and of these records since that time?

A. Since that time, yes sir.

Q. What was your position with the Railroad Company prior to that time, if you held any position?

A. I have been in various positions; I have been with the Company for about 30 years, since I was a boy.

Q. What was your position prior to 1902?

A. In the capacity of Chief Clerk and Cashier.

Q. At the freight office?

A. At the freight office in the same building.

Q. How long have you held that position?

A. I was cashier for 18 years.

Q. And by reason of your long connection with the freight office as cashier and as agent at Indianapolis, you are thoroughly familiar, are you not, with the character of freight that is shipped over the platform, and the character of the freight that comes in on the inbound trains, and the work necessary to handle all such freight, are you not?

253 A. Well, I believe I have a fair knowledge of those things.

Q. Are you acquainted with Mr. D. F. Saur, of the Vandalia Railroad Company?

A. Yes sir.

Q. How long have you known him?

A. I have known Mr. Saur, I guess, about ten or twelve years anyway.

Q. You furnished Mr. Saur, did you not, with some information subsequent to the year 1905 concerning the expenses of the handling of your freight department here in the City of Indianapolis for the year 1905, did you not?

A. I have given him information and access to our records. I don't know how much information he made use of.

Q. You have a record, for instance, of the number of employés that worked in your freight department in the year 1905 as clerks?

A. Oh yes, I have all that.

Q. And freight handlers?

A. Yes, I have all that.

Q. You have a record in your office of the number of cars that are loaded out of your freight station down there?

A. Yes sir.

Q. And the number of inbound cars that come into the city?

A. Yes sir.

Q. You also have a record of the number of carload lots that are loaded by the shipper which are shipped out of Indianapolis?

A. Yes sir.

254 Q. And the number of inbound cars that are unloaded by the consignee?

A. Yes.

Q. And you have that record for each month in the year 1905, have you not?

A. Yes, we have it.

Q. And for all the subsequent years that you have been connected with the freight department down there as agent?

A. As agent, yes.

Q. You testified, did you not, before the Indiana Railroad Commission as to the cost of handling a ton of freight over the platform, did you not?

A. Some two years ago.

Q. Yes sir, in a case wherein Schnull & Company, of this city, were the petitioners, and the Vandalia Railroad Company was the defendant?

A. Yes sir.

Q. Mr. Graham, from your experience as an agent and the information that you have, are you in a position to give an estimate as to the cost of handling a ton of freight over the platform?

A. No sir.

Q. You are not? You gave an estimate in the hearing before the Railroad Commission, did you not?

255 A. I gave it in this way; our payroll is a certain figure, and the actual freight handled over the platform represents so many tons, and the cost is based on that only in the report that I compiled.

Q. You found out the amount of money or the expense of your clerical force and your freight handlers and all the other expense, including your own salary, and then you ascertained the tonnage that was handled over the platform, and then you divided the tonnage by the amount of money representing the expense of the entire office?

Mr. WILLIAMS: Divided the money by the tonnage.

Q. Divided the money by the tonnage and that gave you the cost per ton?

A. Yes sir.

Q. That is the way you figured it.

A. That is the way I would get what was actually handled through the freight house?

Q. Do you know what the total cost of your clerical force or office force was in the year 1905?

A. To the best of my recollection, it was in the neighborhood of $30,000; possibly a little more.

Q. What office force?

A. That included the entire freight house force.

256 Q. I am considering now the office force forming the platform force?

A. I would have to figure that; it is in the neighborhood of $15,000 or $16,000.

Q. Have you the records with you?

A. No sir, I have not the records with me. I can get them.

Q. Could you telephone down to the office and have the books sent up here that would be necessary to figure that out for us?

A. I guess I could in a half hour or so; I think so, yes sir.

Q. I wish you would do that. I would like to have the tonnage book and the payroll book for the year 1905, and such other books as may be necessary to get that information.

A. I think all the information you want is in that book that represents the tonnage and the payroll.

Q. Is the payroll in that book?

A. Yes sir.

Q. And the tonnage?

A. Yes sir.

Q. And the matter of cars received?

A. Yes sir.

Q. And went out in the year 1905?

A. Yes.

Q. During all of the time, Mr. Graham, that you have been connected with the Vandalia Railroad Company, you have been familiar with the class rates, have you not?

257 A. Well, to the extent that we would know the correct rate to use on the tariff in use.

Q. Your duties require you to be somewhat familiar with the rates during all the time of your employment with the Railroad Company?

A. Oh, yes, to a certain degree.

Q. Do you have any recollection of any time during your employment with the Vandalia Railroad Company of the rates ever having been reduced, class rates?

A. No, I don't recall a thing of that kind.

Q. You have the classification, haven't you, of articles to be shipped. What do you call that?

A. There is a classification that we operate under known as the Official Classification.

Q. When was that official classification adopted, if you know, approximately?

A. It has been in use a number of years.

Q. About 20 years?

A. Possibly so.

Q. Now, a rate, or at least, a charge for the transportation of articles may be increased without the change of the tariff, by a change in classification? Is that right?

A. Yes.

Q. Have you any recollection of there having been any change made in the classification which increased the charges for the transportation of certain articles?

258 A. Well, I couldn't name any specific cases. There are possibly some cases in the classification.

Q. Do you remember the change that took place in the classification in 1900?

A. In regard to what especially?

Q. A general revision of the classification, of the Official Classification in 1900, that moved an article that was theretofore under, say, second or third class, up to first class, and from third class to second class, and from fourth class to third class, and so on?

A. I don't recall just what dates that change was made, but there was a change in the classification, applying what is known as Rule 26 and Rule 27, which changed two of the classes.

Q. And that change had a tendency to increase the rates on certain articles?

A. No, I think not, entirely.

Q. Well, now, let me ask you this; if it is not a fact that the Official Classification was first changed increasing the charges to be paid for the transportation of certain freight by moving the article from a given class to a higher class, for instance, in canned goods, they moved that from fourth to third; that is the fact, isn't it?

A. There was a provision made there——

259 Q. (Interrupting.) I am not asking for the provision at this time. I am asking if it is not a fact that they moved sugar and canned goods from the fourth to the third class?

A. I can't answer that.

Q. Then I will ask you if it is not a fact, if after moving the sugar and canned goods from fourth to third class, they established the Rule- 25 and 26, that you refer to?

A. Yes sir, they have established those rules.

Q. I will ask you if under the application of rules 26 and 27 if the charge for the transportation of canned goods and sugar wasn't higher than it was before the change in the classifiaction took place, before the change from fourth to third class?

A. I couldn't answer that.

Q. You know what the Brazil rate, fourth class, to Brazil, from Indianapolis is?

A. At the present time?

Q. Yes, and in 1900?

A. I don't recall exactly; it is in the neighborhood of 12.5 cents.

Q. That is exactly what it is and that was the rate the time this change in classification took place. Do you know what the rate from Indianapolis to Brazil over your road was, and is, in 1900, for third class?

260 A. No, I don't recall.

Q. It is 19½ cents; do you recollect now about that?

A. I don't remember whether it is 19.5 or 18.5.

Q. Well, it is 18½ cents, and so alleged — your bill of complaint. Now, prior to the official change in the classification, sugar and

canned goods were shipped under the fourth class; then after the change in the official classification, it was pushed over into third class, so that 19.5 cents was charged for the transportation of that freight per hundred pounds from Indianapolis to Brazil, where before that only 12½ cents was charged. Now, after that Rule 26 was adopted by your road?

A. Yes.

Q. Now, what was that rule?

A. 20 per cent less than the third class.

Q. So that the other articles that were moved up from fourth to third class, the rates on that were afterwards reduced by Rule 26 by 20 per cent?

A. That is the way the rule applied, 20 per cent. less.

Q. So that if the rate prior to the change of the classification was 12.5 cents, and thence by the change in the official classification, it went up to 19.5 cents, from here to Brazil, and then Rule 26 applied, making a reduction of 20 per cent., the rate under the application of Rule 26, was higher by three cents than it was
261 prior to the official change in the classification; isn't that the fact?

A. Possibly it is true; if that is the schedule at that time.

Q. And the rates that were charged in 1900 are the same as are now charged by the Vandalia Railroad Company for the transportation of freight, classified rates, isn't that right?

A. I don't remember just exactly the date in 1900.

Q. I mean the rates, I am not talking about the classification. Now, they are the same as they were in 1900?

A. The rates are the same to the best of my recollection.

Q. Now, you have an office force down there at your freight station in Indianapolis consisting of bookkeepers, clerks, checking clerks, and so forth, haven't you?

A. Yes sir.

Q. How many men have you down there in your office force, exclusive of the platform force, and other labor that you use; simply the office force; on an average how many have you?

A. I have got about 26 clerks altogether; in my office, proper; I have one—27.

Q. These clerks are charged with the duty of looking after inbound freight and outbound freight in lots less than carload lots in the City of Indianapolis?

A. Their duties would include such labor.

262 Q. And also these clerks are charged with the duty of looking after the cars that are loaded in carload lots and shipped out of Indianapolis, is that right?

A. At the freight station, you mean?

Q. Yes sir, and elsewhere in Indianapolis?

A. Oh, yes; their duties are in connection with the handling of carload freight from other points.

Q. Outbound?

A. Outbound.

Q. And also they are charged with the duty of looking after the

carload lots inbound, destined to some consignee residing in the City of Indianapolis, Marion County?

A. Yes sir.

Q. Now, with reference to the freight shipped over the platform, what are the duties of your clerks with reference to that, in looking after that sort of shipments; freight handled over the platform at Indianapolis?

A. The shipment is first received by a shipping clerk on the platform from the shipper; checked carefully and receipted for; in turn it is taken up by checkmen, who, with his truckman, checks the freight and loads it into a car.

By Mr. WILLIAMS:

Q. Then what becomes of it?

A. The shipping ticket at that time is turned over to the
263 bill clerk, who makes a waybill for the freight; the waybill is taken and forwarded in the regular course of business to the receiving agent at destination; they are given to the local freight conductor, who handles it as waybills, or whatever the case may be.

By Mr. KORBLY:

Q. Now, you have a number of freight handlers on the platform?

A. Yes sir.

Q. They handle the freight that is delivered there at the station, is that right?

A. Yes sir.

Q. Your station down there is about probably from 300 to 350 or 400 feet in length?

A. Yes, just about.

Q. It is less east and west, it — longer east and west, than it is north and south?

A. Yes sir.

Q. And you have a number of large doors opening on to the platform from the outside?

A. Yes sir.

Q. And over each of those doors is the name of the town, and the freight to that particular town is supposed to be put off at that door on to the platform, is that right?

A. Yes sir.

264 Q. Then about how many freight handlers have you down there on an average?

A. We average about 20 actual freight handlers.

Q. You have four or five clerks and four or five checkers to work with the 20 freight handlers, don't you?

A. Yes, just about.

Q. How many clerks would you have working with the freight handlers, about?

A. In that case there would be five to six clerks; five check clerks for that number of freight handlers, or about three or four bill clerks.

Q. Three or four bill clerks and five check clerks; now, then the bill clerks and the checkers and the freight handlers work together

in the receiving of the freight on to the platform from the shipper and the loading of this freight into the proper car for its destination?

A. Yes sir; they ordinarily would have to.

Q. These clerks and freight handlers stand around there and they check up the freight and the checker helps to load the truck, does he not?

A. He has a helper right next to him who does that. Bill clerks do not work on the platform.

Q. There are clerks that work on the platform?

A. Receiving clerks.

Q. As I understand it, you have three or four different clerks down there; there would be the checking clerk, and bill clerks, and
265 other sorts of clerks you have there, don't you?

A. Yes sir.

Q. The clerks you have reference to that work on the platform with the freight handlers and the checkers, are what sort of clerks?

A. Receiving clerks is the common expression.

Q. The receiving clerks and the checkers and the freight handlers there on the platform receive the freight and load it into the proper cars, as I have already stated. Who makes out the receipt when the goods are delivered, the receiving clerk?

A. Our receiving clerk, in case the shipper does not prepare the receipt, we are expected to give the man a receipt and itemize his goods. There don't all shippers present a receipt.

Q. The balance of your office force—you have got three receiving clerks and five checkers? Now, the balance of your office force is devoted to looking after waybills and looking after the clerical force generally, is that right?

A. Yes, they are employed all day long in connection with the business.

Q. Now, what are the duties of your clerks in reference to the carload lots that are shipped out of Indianapolis? Carload lots that are loaded by the shipper and not by the freight handlers over the platform?

266 A. On our own rails or on the rails of foreign lines?

Q. Both.

A. Any cars that are loaded by the shipper on an industry located on our own lines, they make a request on us for an empty car to load, and a car is placed for their loading. They complete loading themselves; advise us that the car is ready to go forward, and to render a shipping bill for the shipment. Then in turn it is taken up by the bill clerk and a waybill made for it and proper directions given to the conductor to handle the car.

Q. Now, that has reference to all cars, carload lots, that go to Vincennes, or just here to Terre Haute?

A. Any point that is reached over our line in the westward movement.

Q. Your office force down there takes care of all the freight in carload lots that goes over the Vincennes Division as well as it takes care of all freight on the St. Louis Division?

A. Not at the present time.

Q. It did in 1905?
A. No sir; not on all outbound business.
Q. Only on the St. Louis Division on outbound business?
A. That is all.
Q. Who seals up the car after it is loaded, the cars you have been talking about?
A. By the shipper you mean?
267 Q. Yes.
A. That is brought down to our city yard, or receiving yard, at least and is then in turn sealed by a regularly employed yard clerk.
Q. That is, out west of the Belt Railroad, is it?
A. That is in the yard, yes sir, wherever they may happen to be.
Q. It might happen to be right up near your freight depot?
A. Anything on our own tracks immediately adjoining the station is looked after by a man under my employ, or direction rather.
Q. Now, you handle the waybills and the other bills in reference to the carload lots shipped out of Indianapolis which are loaded by the shipper?
A. Yes.
Q. Handle all the necessary papers and reports in reference to that?
A. Anything that moves over our rails.
Q. Now, you take charge and keep track of all carload shipments on all of your branches running into Indianapolis and destined to some consignee residing here?
A. Yes.
Q. So that, a carload lot, say, that was shipped from Vincennes to Indianapolis, your office force would look after that?
A. Yes sir.
268 Q. Even though the freight was not handled over the platform?
A. Yes sir.
Q. And the same thing in reference to goods shipped in from St. Louis or Terre Haute, or any place else?
A. Yes sir.
Q. Destined to some industry in Indianapolis, where the consignee unloads the car himself?
A. Yes.
Q. What clerical work is necessary to do in reference to carload inbound business, where the carload is unloaded by the consignee, and where it is unloaded by the consignee and does not pass over your platform in the freight station?
A. Waybill is usually carried with the car, of course, usually by the conductor, and surrendered at the destination point which would be Indianapolis. The waybill is taken in our account, turn- over to the clerk who abstracts the waybills, and the waybill is reported to the Auditing Department in the regular course of business, in a monthly statement.

By Mr. WILLIAMS:

Q. How about an expense bill?

A. An expense bill is made for the car, which is presented
269 to the consignee for collection and is carried out by a collector.

By Mr. KORBLY:

Q. What do you mean by an expense bill?

A. The freight bill covering the expense; it is based on the waybill.

Q. That has reference to the records of the car. What, if any thing, has your office, or the clerks in your office, to do with the checking out of goods or freight that is received here inbound freight in carload lots, that does not pass over your platform at your freight station?

A. It is not the practice to check carload shipments to consignee.

Q. But you do, while it may not be the custom, you do do it?

A. We do, frequently.

Q. And you do that for the protection of your road, don't you?

A. Yes sir, it is done for our own protection as well as for the protection of the consignee and shipper.

Q. And it is done in almost every instance where the consignment is perishable, is it not?

A. We give a supervision over that class of merchandise.

Q. And I will ask you if it is not done almost in every instance, Mr. Graham, where carload lots are received here, if you do
270 not have a clerk there where the car is unloaded, for the purpose of inspecting the consignment for your own protection?

A. Well, it is done in this way; any perishable goods, or goods that we feel should be inspected after arrival, we give them a thorough inspection before the consignee *beings* to unload or haul his freight away.

Q. And that is done by a member of your office force, is it not?

A. Someone in connection with our freight department; not necessarily through our office force.

Q. You also inspect the goods that are loaded in in carload lots; you check them over, don't you?

A. That depends upon the commodity.

Q. What sort of a commodity, would you refrain from sending a clerk to the car to inspect it?

A. Why, if a man was loading a carload of iron or some rough freight, we simply give him a receipt for it.

Q. But if it is merchandise, would you inspect it?

A. We would be very likely to inspect the freight.

Q. If it was grain, would you inspect it?

A. Not likely, no sir.

Q. You do do it, don't you?

A. No sir, we don't have any jurisdiction over the inspection of grain.

271 Q. What per cent. of the cars, in your judgment, that are shipped out of Indianapolis, carload lots, that you have an employé there to make an inspection of the consignment?

A. That is very light; very slight.

Q. The inspection of the inbound cars is considerably more than the outbound?

A. Yes sir.

Q. In other words, you rely upon the agent at the destination of the consignment to make an inspection of that consignment for the protection of your Railroad Company, the same as you inspect the cars, the inbound cars, carload lots, for the protection of the railroad?

A. That would be the most natural way, I should think.

Q. Then your clerks are also charged with the duty of looking after freight that is shipped out of that freight station over another division of the Pennsylvania or Vandalia Railroad Company, is that the fact?

A. On outbound business?

Q. Yes; for instance, you clerks, down there, look after the loading and all of the clerical work necessary for less than carload lots handled at the freight station and shipped east over the Pennsylvania?

A. We do considerable of that work, yes.

Q. What have you to do with, for instance, in the year 1905,—suppose 145,998 cars, freight cars, came to the Indianapolis
272 Terminal, Indianapolis being the destination of the cars or the cars were to pass through Indianapolis, what would you have to do with the cars that passed through Indianapolis?

A. All such cars on which the billing passed through my hands, would, of course, necessitate my looking after the cars to that extent.

Q. Could you tell me from any records that you have what would be the total number of cars going out from Indianapolis with freight in the year 1905?

A. I don't believe I have that record complete.

Q. For your information, I will tell you that Mr. Saur, in his testimony on yesterday, stated that the total number of cars, in and out of Indianapolis, in freight, was 145,998 cars in the year 1905. Do you know how Mr. Saur arrived at that estimate of that number of cars?

A. Why, he could very easily get the record from the car record movement, which I believe is fully compiled in the Car Accountant's office, at Terre Haute.

Q. Do you keep a record of any such cars?

A. No, we have no complete record of the through movement of cars, as we call it.

Q. Do you remember in the year 1905, what, if anything, your clerical force had to do with the 145,998 cars?

A. It would take some figuring to ascertain about what per cent we had of those cars to do with, but a large part of
273 them would enter into our account.

Q. You would have more to do than simply make an estimate of cars every day, of cars in and out of the freight house?

A. Yes sir, considerably more.

Q. Do you know how much more? We can figure that out. Does your book there give the number of cars that were inbound, car load lots that were unloaded by the consignee?

A. No sir.

Q. Where could that information be obtained?

A. I don't believe that we compile our records in such a way that that could be separated.

Q. Do you keep track of the number of cars that are inbound and outbound in your freight house?

A. Yes sir.

Q. Is there no way of arriving at an estimate or an accurate statement as to the number of cars loaded in carload lots inbound, destined to this terminal?

A. Just for Indianapolis proper, you mean, city consignees?

Q. Yes.

A. I don't know that we have kept that kind of a record in any way.

Q. What does your office force have to do, if anything, with reference to carload lots that are not destined to an Indianapolis consignee?

A. Well, there is about as much labor so far as the clerks
274 are concerned, in handling the shipments destined beyond Indianapolis as there would be for a shipment to Indianapolis. We are obliged to make a record of the way-bill, abstract it, report it to the Auditor, make an expense bill, submit it to connecting lines and secure a receipt on it.

Q. As an illustration; a carload lot which originates at Brazil, destined to Knightstown, Indiana, the bills would pass through your office, wouldn't they?

A. Yes sir.

Q. But a carload lot originating at Terre Haute, or any point along the Vandalia road between here and East St. Louis, destined to any point in Indiana, or elsewhere, where the freight comes through Indianapolis, that freight goes through your office, doesn't it?

A. Yes sir.

Q. No matter, where it is destined, if it comes through Indianapolis?

A. Any freight originating or passing over our line.

By Mr. WILLIAMS:

Q. Let me call his attention to a matter. Knightstown is on the Pan Handle?

A. Yes sir.

Q. Don't they bill through to Pan Handle points?
275 A. Yes sir. I made a mistake.

By Mr. KORBLY:

Q. Well, if it goes through to Knightstown, you wouldn't have anything to do with it?

A. If the waybill was made through, Brazil to Knightstown, we would not handle it.

Q. But if the bill was from any point along the Vandalia Line to any point along the Pennsylvania Line, you wouldn't handle it, would you?

A. No, wherever we have through billing arrangements.

Q. But to a great many points east of Indianapolis and north and south of Indianapolis where the freight originates on your line, car load lots, that bill goes through your office?

A. Yes sir.

Q. And your clerical force down there takes care of it?

A. Yes sir.

Q. And you say about as much clerical work is required to look after that car as there is to look after an inbound carload lot consigned to Indianapolis and to be unloaded by the consignee?

A. Well, with the additional labor connected with looking after the car after arrival; of course, that is additional.

Q. But in every other respect it is the same with that exception?

A. Yes sir.

276 Q. Is there any way by which it could be estimated as to the number of cars originating on the Vandalia lines St. Louis division and destined to points off of the lines and destined to Indianapolis—the number of cars for a given month of the year 1905 or the year's time—cars of that character?

A. It is possible the general freight department may have compiled something of that kind; we have not.

Q. You have been connected with that office a great many years. Do you think you are familiar enough with the amount of work done in each kind of traffic we have been talking about to give us an estimate in per cent as to the total work handled by your office force? What per cent does this traffic originating on the St. Louis division destined to some point off of your line passing through Indianapolis, what per cent is that of the total cars handled by you?

A. I understand you want to know the per cent of cars handled going beyond Indianapolis.

Q. Yes, the per cent those cars bear to the total cars handled by you, just approximately.

A. I couldn't say off hand.

Q. You couldn't say off hand?

A. No sir.

Q. More than half?

A. That go beyond?

Q. Yes.

A. Oh yes considerably more than half.

Q. 75%, three-fourths of that?

A. Yes.

277 Q. More than that?

A. Possibly more than that.

Q. Your office force also takes care of carload lots originating on the Vincennes division?

A. On the inbound business.

Q. On the Vincennes and St. Louis division?
A. Yes.
Q. What other division have you?
A. That is all that enters Indianapolis now.
Q. Do you have freight originating on the Logansport division, coming down to Terre Haute and then coming to Indianapolis and passing east?
A. Yes sir.
Q. You look after that too, don't you?
A. Yes sir.
Q. You also have carload lots originating on the Peoria division, don't you?
A. Yes sir.
Q. And that comes down sometimes through Indianapolis, don't it?

A. Yes.

278 Q. And that passes through the office don't it when it is on a line other than the Pennsylvania lines going east?

A. Anything coming over the St. Louis division at Indianapolis passes through my department.
Q. Now taking all of these cars together, inbound cars coming into Indianapolis, from the Peoria division, St. Louis division, Logansport division, Vincennes division; what per cent do those cars bear to the total number of cars of which your office keeps track and keeps record of?
A. I wouldn't undertake to answer that.
Q. More than eighty five per cent?
A. It would be considerably more than 75% I should think.
Q. Is there any way of ascertaining how many such cars pass through Indianapolis of which your office keeps track?
A. I couldn't very well do that.
Q. It could be done couldn't it?
A. I expect it could be done, if the different divisions would take it up.
Q. There are records somewhere in the control of the Vandalia Railroad Company that would give that information?
A. It is very possible.

279 By Mr. WILLIAMS:

Q. Where is it? I would like to have him tell where it is while you are right there.
A. I may have been hasty in my answer. I don't know just how the different divisions keep their car records that would secure that information.

By Mr. KORBLY:

Q. Where did Mr. Saur, if you know, get the total number of cars, in and outbound of Indianapolis, freight cars?
A. In and outbound?
Q. Yes.

A. He gave it out as 145,998 for the year 1905. Do you know where he got that information?

A. No sir I do not.

Q. Do you know whether or not that is correct?

A. No I do not.

Q. Now can you tell us from your book the total cost or expenses of your office force for the year 1905? Now the office force I want. There is a distinction between the office force and the platform force. Mr. Saur made that distinction, and I want to have you observe it.

280 A. The figures show here Mr. Korbly for the year 1905 $16,709.90. That is just the office pay roll.

Q. Now do any of the clerks, the receiving clerks, that work on the platform at the freight station perform any service whatever in reference to the inbound cars carload lots? Do they go out sometimes and check in a car? Examine it?

A. Yes sir occasionally.

Q. They do that every day don't they?

A. No not necessarily; their time is taken up in looking after the receiving of freight principally.

Q. Yes, but when they are not busy at that, they go out and check in car load lots, don't they?

A. Not necessarily; regular tallymen are employed for that checkmen.

Q. I say they do go out and do that work occasionally.

A. Occasionally yes.

Q. About how often?

A. Not very often.

Q. Now the most of the freight handled over your platform is received in the afternoon isn't it?

281 A. The greater portion of our outbound business is loaded during the afternoon.

Q. Well received at the platform in the afternoon?

A. Of course the larger per cent is received in the afternoon.

Q. When you say a large per cent would you say 80% was received in the afternoon?

A. I should think 75% at least.

Q. And that is from say two o'clock on, isn't it?

A. About.

Q. About two o'clock on?

A. Just about.

Q. Now in the morning your freight handlers and checkmen are not awfully busy are they?

A. Yes sir, they are all busy.

Q. What doing?

A. The freight handlers and check clerks take care of the inbound business.

Q. That is inbound received in less than car load lots—received there at the station?

A. Yes, and such outbound business as we load too in the forenoon.

282 Q. Now can you tell us what the cost of four platform force is for the year 1905?

A. I have the figures here; I can put them together.

Q. If you please.

A. Platform service, that covers the checkers and freight handlers.

Q. That covers the checkers and freight handlers and the clerks who receive the goods. Or you might tell us what that covers.

A. That covers the platform foremen, the checkmen and the freight handlers.

Q. All right, well give us the expense of that.

A. I find the platform and checkmen as I have taken them is $13850.45.

Q. Now Mr. Graham do you know how many cars in the year 1905 were loaded at the freight house over the platform and sent out of Indianapolis known as outbound cars?

A. I can tell you from the records here.

Q. And how many cars were inbound of that character of freight, that is platform freight?

A. Yes I have that record here.

283 Q. And also how many cars were sent out of your freight house loaded at the freight house over the platform that went east on the Pennsylvania division?

A. No I haven't got that here.

Q. Where could that information be gotten if you know.

A. That merchandise is handled miscellaneously and an absolutely correct record is not made up at the station.

Q. Mr. Saur in his testimony yesterday testified that the estimated cars in and out were 13 inbound, outbound 24 and 5 east bound cars making a total of 12852 cars. Where did he get that estimate from if you know?

A. He must have arrived at that from the record of the cars inbound, the amount of lading in the cars which the billing would show was for points beyond Indianapolis.

Q. Yes, but your books would show the number of cars inbound and the number of cars outbound to your freight house of freight handled over your platform?

A. Yes sir.

Q. You would not have to estimate that; you could ascertain that to a certainty.

A. Yes sir we count those cars?

Q. Will you some time within the next day or two—how long would it take you to figure that out?

284 A. About five minutes.

Q. If you please.

A. You want the inbound and outbound separately.

Q. Yes please for the year 1905. Understand now what I mean by inbound and outbound—I mean those cars that are loaded over the platform.

A. The inbound cars, 3004, outbound 6990 total 9994.

Q. How many days did you handle freight at the freight house in the year 1905?

A. During 1905 every working day.
Q. About 60 days off?
A. Very nearly about that.
Mr. WILLIAMS: Saur's estimate was on the basis of 306 days to the year.

By Mr. KORBLY:

Q. What number of days would you say would be working days in the year 1905?
A. Without looking over the calendar carefully that would put 306 working days in the year.
285 Q. Now these are the cars as I understand it Mr. Witness that are loaded over the platform at your freight station?
A. Yes sir.
—. You say inbound cars received at the freight house; you mean cars received ofer the Vandalia division or the St. Louis division of the Vandalia road from Terre Haute and other places?
A. Yes sir.
Q. But on that division?
A. Well it all comes in on the St. Louis division here at Indianapolis from whatever division it originates. No matter what source it originates inbound cars come in over the St. Louis division.
Q. And the outbound go out on that division?
A. The outbound goes out over the St. Louis division.
Q. That is all the freight you handle over the platform excepting only that part that you handle down there that is loaded into cars that go out over the Pennsylvania division east?
A. Yes.
Q. Now Mr. Graham you spoke about that part that your clerical force took in reference to cars, car load lots that originate
286 on the Vandalia system passing through Indianapolis and destined to points south east and west. What if anything has your office force to do with car load lots that originate south east and east of Indianapolis but passing through Indianapolis and destined to some point on the Vandalia system?
A. Other than at Indianapolis?
Q. Originating south east or east or north of Indianapolis but passing through Indianapolis on to the Vandalia railroad system and destined to some point on that system?
A. If it don't pass through Indianapolis we wouldn't have anything to do with it.
Q. I am not saying if it doesn't pass through Indianapolis. If it does pass through Indianapolis, then what have you to do with it. For instance suppose a carload shipment is made from Shelbyville—I will not take Shelbyville—Rushville for instance; have you a road passing through Rushville?
A. Rushville is on the C. H. & D. line.
Q. Well suppose a car originates at Rushville and is sent to Clayton and it comes to Indianapolis and passes over your line going to Clayton. What have you to do with reference to that shipment, your office force?

287 A. That would be governed altogether by the billing in each instance; if billed Rushville to Clayton a waybill would accompanying the car and go direct to Clayton; if billed only to Indianapolis the waybill would necessarily have to be handled through the local office.

Q. Have you shipping arrangements with all the roads leading out of Indianapolis? If you know?

A. You mean through billing arrangements?

Q. Yes.

A. I couldn't say off hand.

Q. But in a great many instances car load lots are billed from a point south east or north of Indianapolis and consigned to some point along your system, and the car passes through Indianapolis going on to your system at this point, and the papers and the records of that car come to your office? Is that not the fact?

A. Not in all instances.

Q. Not in all instances; but I say in a great many instances.

A. That is under the——

Q. (Interrupting.) In a great many instances isn't that right?

288 A. Well I wouldn't say in a great many instances because the through billing arrangements vary it.

Q. Could you give us an estimate of the number of times a day or week or month cars arriving at points south east or north of Indianapolis and billed to some point along your line of road, the car getting on to the road at this point, Indianapolis, can you give us approximately the number of times that occurs, a day or a week or a month where the bill goes to your office and you look after it and handle it?

A. No I could not.

Q. There are so many times that you couldn't give us an estimate?

A. So many times that they do not, yes.

Q. What?

A. So many instances that they do not.

Q. The things you don't handle you do not know about; that is a cinch; but the things you do handle you know about. I am not asking as to the matters you don't know about, but I am asking you as to the matters that pass through your office. Now I am asking you as to the number of times that that does oc-ur not that it does not occur.

289 A. I might answer your question and then it might not be of much effect.

Q. I am asking you now only to give your estimate.

A. We handle some billings for just such business as you refer to.

Q. What cars originating south east or north of Indianapolis and coming on to your line at Indianapolis. Now there are clerks at your office that look after that sort of billing?

A. Oh yes there are clerks that look after that.

Q. How many clerks have you that look after that?

A. I couldn't designate the number.

Q. Approximately about how many?

A. There are I should say about three clerks that would have jurisdiction not only concerned with billing but would look after that billing in cases that come through their hands.

Q. I believe I have asked you—and you don't know where Mr. Saur got his estimate of the number of cars in and outbound freight cars?

A. The total freight cars?

Q. Yes.

290 A. No.

Q. For the year 1905?

A. No sir I do not.

Q. The freight cars in less than carload lots which are loaded at the freight depot after they are loaded are taken to the yards west of the Belt Railroad in Indianapolis are they not, and there made up into trains?

A. Yes they are at the present time.

Q. That was the method pursued wasn't it in 1905?

A. Yes sir I think so.

Q. A switch engine after you have loaded a string of cars in the freight depot, would hook on to those cars and they would then be pulled out over the track run-ing west to the yard, from the Belt Railroad?

A. Yes.

Q. And from that point the cars were distributed into the trains according to their places of destination?

A. That is it?

Q. Well in 1905 isn't it a fact that they loaded and started a train, made up a train and started it from the freight station?

A. No sir not to my knowledge.

291 Q. They used to do that didn't they?

A. Not to my knowledge, not that.

Q. They did it the other way?

A. The cars were switched out to the yard and distributed and put into the train.

Q. And the only portion of the track that you had from Indianapolis that was used for the loading of those cars and taking them out to the yards of the Vandalia west of the Belt R. R. was the track leading out to there, and then the switches out at that point?

A. That was the only means of getting there.

Q. Yes. Counting the number of cars that were actually loaded at the freight station inbound and outbound for the year 1905, and assuming the number of working days in that year to be 306, there would have been on an average of all of the cars taken out to your yard and distributed, on an average 32 each day and probably one third or two thirds cars each day taken out there and distributed, isn't that the fact?

A. Without figuring it I would say that would be near it. You just figured it didn't you?

Q. 32 each day of cars.

A. Yes.

292 Q. Now do you know where all of the traffic belonging to, the Indianapolis division terminal division, of the Vandalia road are located?

A. I think I do know, about where they are.

Q. When they count in the terminal division do they also include the I. & V. tracks in that?

A. I don't know what arrangements they have for that special part of it.

Q. Mr. Saur on yesterday testified that there were 21.44 miles of side tracks and sidings and mains within the Indianapolis terminal belonging to the Vandalia Railroad Company. Do you know where those tracks are located principally?

A. I expect he refers only to the yard facilities and trackage around the station.

Q. Where are their yard facilities located?

A. Those that I know about are our trackage immediately surrounding our freight station and our main line to the yards, the yards themselves, whatever they comprise. I don't know the number of miles.

293 Q. And these yards out there is where most of the cars carload lots and otherwise, are handled, coming to and going out of Indianapolis as well as all carload lots passing through Indianapolis are handled.

A. Yes sir.

Mr. KORBLY: I understand you to say Mr. Williams that you wanted to be away tomorrow?

Mr. WILLIAMS: Yes. If absolutely necessary I can be here part of the time.

Mr. KORBLY: No.

Mr. WILLIAMS: I have an engagement that will not take me all day. I can give part of the time if desired.

Q. Now Mr. Graham Mr. Saur testified yesterday as to the cost per ton of handling freight by the freight handlers over your platform in the station at Indianapolis during the year 1905. He stated that the tonnage amounted to fifty eight thousand and some odd tons. I have it right here 58,868 tons; and in estimating the cost of handling that tonnage per ton he ascertained for that year the expense of your office force which you have already given us to be $16709.90, and added to that the expense of the platform
294 force which you have already given us to be $13850.45, making a total of $30560.35; and he divided that by the number of tons handled over the platform which gave him as he estimated the cost of handling the tonnage per ton of 51.9 cents. Now from your experience as agent of the Vandalia R. R., this terminal, and from the knowledge that you have of the number of cars inbound carload lots, originating on your line and passing through the city of Indianapolis through this terminal, and from the carload lots originating on your line and destined to some consignee at this point, which are unloaded by the consignee, and oftentimes the consignment is checked up by some clerk in your office

and is charged as a part of the expense of your office, and all of the waybills, or all of the necessary bills and the bill of lading with reference to those cars passed through your office, a record of which is kept by the clerks in your office; and also considering the carload lots originating off of the line of your road but destined to some point on your line of road, going on to the line of road at the Indianapolis terminal, where the goods or the carload lots not
295 shipped through by through bills but passes through the city of Indianapolis and which your clerks look after as you have already testified; and also considering the part of the time that some of your checking clerks and receiving clerks at the platform station give in checking out carload lots that are received down there at that station; I will ask you whether or not you think it is reasonable in ascertaining the cost per ton to consider all of the expenses of your office and all of the other expenses that I have enumerated?

A. Yes it is reasonable.

Q. In ascertaining the cost of the handling of the tonnage over the platform?

A. Yes sir I think so, and in computing this cost in this statement which I present here, there is nothing included there only the actual expenses incurred while the freight is in and about the freight house.

Q. You understood my question now to take into consideration all of the services that your clerks rendered in looking after the inbound freight carload lots that does not pass over the platform, all of the services rendered by your clerks for freight in carload lots originating on your divisions, on the Peoria division,
296 Logansport division St. Louis division and Vincennes divisions which passes through the Indianapolis terminal and destined to some point east, of which your clerks keep a record; taking into consideration all of the services rendered by your clerks in your office on all carload lots passing off of your lines of road and originating on your line of road, and the expenses of all that being paid for by your offices, whether you would consider all of that in ascertaining the cost of handling the freight per ton over your platforms?

A. Taking it all as a whole yes sir, I would.

Q. And why?

A. I don't see how they could begin to separate that expense at all.

Q. Just simply because you don't see how you could separate it, you should charge it all to the platform, is that it?

A. I might answer yes on that.

Q. What?

A. That is the way it looks to me.

Q. Is it not a fact Mr. Graham that more time is spent by
297 your office force in looking after inbound carload lots and inbound freight carload lots, in looking after freight originating on your line in carload lots passing through this terminal to some point off of your lines, and in looking after some carload

lots originating off of your line and passing to some point on your line, than they give to the looking after of purely platform freight or local freight if you please?

A. Well that is possible yes.

Q. Isn't that the fact?

A. Well it would seem that it would be necessary——

Q. (Interrupting.) To be so.

A. Not to be so, but in order to expedite and take care of all the business, you must have your organization.

Q. That is not what I am asking you. I am asking you if more of your clerical service is not required to look after that business I have enumerated than to look after the platform business or local business going over your platform into local cars?

A. I don't know how you could distinguish between them very well.

298 Q. You make the distinction yourself Mr. Witness. You have testified about the class of services required on these car load lots about which you have testified and you have been in that office for a great many years as clerk and as agent. Now, I am asking you if in your opinion more services are required of your clerks in looking after this carload lot question.

A. Well, the bulk of the business is carload.

Q. (Continuing:) Than in looking after simply the platform business?

A. What puzzles me in the matter is how you are going to draw a line and separate it so distinctly.

Q. It is puzzling, I will admit. I want you to give me an opinion as to whether or not their services are not directed more to the car-load business than to the platform business? Isn't that the fact?

A. It is attributed—if it is attributed exclusively to the clerk's services, I should say yes.

Q. I am confining this question to the clerk's services, yes.

A. But there are other expenses that the clerks have nothing whatever to do with.

299 Q. I am only confining this to the clerk's services, you understand that, don't you?

A. Yes. I see that.

Q. So that you don't have to consider the platform end?

A. The time consumed by clerks in entering the volume of business is, of course, greater than the platform business in connection with all the freight, and would necessarily require more force to do so.

Q. Well, if it requires more service to look after the carload lots than purely local—you say that is the fact, isn't it?

A. It is necessarily a fact, so far as the clerks are concerned.

Q. Yes, so far as the clerks are concerned. Now, how much more than fifty per cent would you say are the services of your clerks required to look after the carload lots than the purely local business, or freight passing over your platform?

A. Well, I wouldn't like to say off-hand. That can be estimated, I expect. That is drawing the line pretty fine.

Q. Give it in percentage.

A. It would be pretty hard to do.

Q. Well, I know, but you can give an estimate? Wouldn't it take about fifteen per cent of your force down there to look after the platform business, and the balance of your force down there to look after the carload business?

A. Well, I should say it would take more than that; yes,
300 considerably more than that.

Q. More than what?

A. More than fifteen per cent.

Q. What in your judgment would it take?

A. I should think it would take fifty per cent of it, at least.

Q. You said it took a good deal more than half a few minutes ago?

A. Which?

Q. You said a few minutes ago it took considerably more than half of the services of your clerks to look after the carload business than it did to look after the tonnage passing over the platform.

A. Yes, that is true.

Q. That is true, is it?

A. Yes sir.

Q. Now, I will ask you whether or not fifteen per cent of the services of your clerks wouldn't look after the tonnage over the platform?

A. I should think twenty per cent anyway.

Q. Twenty per cent, anyhow. All right. Now, if twenty per cent of your clerks would look after the tonnage passing over your platform, and the other eighty per cent of the services of your clerks were required to look after the carload lot business about which you have testified, would you now say that it is fair
301 to consider the entire expenses of your working force, as Mr. Saur did in his estimate, in arriving at the cost per ton of handling freight over the platform?

A. I don't know how you are going to get at it any differently.

Q. I am not asking you if you know of any way to get at it differently. I am asking you whether you as an employé of the Vandalia, a man of experience, would consider it fair, when it only took twenty per cent of the time of your office force in looking after the tonnage passing over the platform, and eighty per cent of the time of your office force in looking after the carload lots, whether or not you would consider it fair to take the whole of the expense of your clerks, in estimating the cost per ton of handling freight over your platform.

A. I can't see any other way, but what that would all have to come in together there. I don't see how it could be so divided as to make a separation there.

Q. I didn't ask you that. I am asking you whether or not you thought it was fair, if it is a fact, and was a fact in 1905 that only twenty per cent of the expense of your office was incurred in looking after the platform business, and eighty per cent of the expense of your office was for looking after the carload lot business, whether

or not you would consider it fair to charge the entire 100 per cent of the expense of your office in estimating the cost per ton in
302 handling freight over the platform?

A. Well, I will have to repeat my reply there, I can't see any such——

Q. (Interruption.) Is there any way from your records by which you can ascertain accurately the number of cars inbound originating on your line in carload lots and destined to the Indianapolis terminal?

A. I don't think we keep any record of that.

Q. That business passes through your office, doesn't it?

A. Yes sir.

Q. And yet you don't have a record of it?

A. Now, let me get you correctly.

Q. (Read by reporter, as follows:) Is there any way from your records by which you can ascertain accurately the number of cars inbound originating on your line in carload lots and destined to the Indianapolis terminal?

A. No, we don't keep that. You see everything we have is received at Indianapolis. It don't make any difference where it originates.

Q. You don't keep that?

A. No.

Q. You have no record of the number of cars?

A. No, we have just the number of cars received at Indianapolis.

Q. You mean the total number of cars received?

303 A. The cars for which we handle the billing.

Q. Oh, you have that, have you?

A. For which we handle the billing, yes.

Q. Well, how much does that amount to, do you know? How long would it take you to get that information, the cars for which you handle the billing in the year 1905?

A. I have that right here.

Q. Is that separated, inbound and outbound?

A. Yes sir.

Q. Now, the outbound originates in Indianapolis?

A. No, it originates at other places.

Q. Other places, and passing through Indianapolis?

A. For which we handle the billing.

Q. And is that separate from the carload lots originating in Indianapolis?

A. No.

Q. All cars arriving off of the line and coming to this terminal, or coming on to your system, and all cars loaded here and shipped over your system are handled together?

A. For which we handle the billing?

Q. Have you got an estimate of the number of cars, or a record of the number of cars for which you handled the billing originating on your system and going to Indianapolis, or going beyond Indianapolis?

304 A. No, I don't think I could give that.

Q. Well, how does it come that you keep one and not the other?

A. Well, the cars that pass over our line could originate from some Western line beyond our line, and be destined to Indianapolis, and still not originate on our line.

Q. Well, then all right. I will make it broader and say all cars which come to Indianapolis over your system, and coming to Indianapolis. Have you got a record of them?

A. I make a report, yes, on cars for which we handle the billing.

Q. Those cars coming over your line to Indianapolis destination, whether they originate on your line or come on to your line from some other point?

A. Yes.

Q. When they come to Indianapolis, you have a record of them?

A. Yes, sir.

Q. Have you also a record cars that originate on your system, or off of your system, and come on to your system and pass off of your road to points East?

A. No, sir: that is, not for those unless we handle the billing.

Q. Sometimes you do, for instance, sometimes you handle
305 the billing for cars that originate off of your line and come on to your line and pass through Indianapolis?

A. Oh, yes.

Q. Is that included in this last estimate?

A. Yes, this record here covers the cars for which the billing passes through our hands.

Q. I want to separate them. As I understand it, you have the number of cars originating on your line, coming on to your line, or coming to Indianapolis, whether they originate on the system or not?

A. If the billing passes through my hands.

Q. How long will it take you to give us a total of that?

A. Well, I have it here in twelve months, both inbound and outbound, with the billing that passes through our hands.

Q. Well, will you get it for me?

A. Yes, sir.

Q. How long will it take you to get it?

A. Ten minutes, I suppose.

Q. I would like to have it now before I go to dinner, because I want to do some figuring.

Mr. WILLIAMS: What is it we are going to get now?

The WITNESS: I am going to give him the figures I have here for car lots that come inbound and outbound, the billing for which passes through our hands.

305½ Mr. WILLIAMS: All right.

A. My answer to that is, the number of cars passing and received at this station during the year 1905 for which the billing passes through our hands is thirty five thousand two hundred and

forty one cars inbound and seventeen thousand six hundred and fourteen cars outbound.

The hearing is now adjourned until 2:00 o'clock P. M.

306 WEDNESDAY, *September* 9, 1908—2 o'clock p. m.

The hearing was resumed before the master, present the same as before the recess.

The direct examination of the witness EDWARD F. GRAHAM was resumed as follows:

Questions by Mr. BERNARD KORBLY:

Q. Mr. Graham, in order to get it into the record, can you furnish me a statement of the number of inbound loaded cars, carload lots, that was received at the Indianapolis terminal and unloaded by the consignee in the year 1905.

A. Yes, that could be compiled I think?

Q. Where would you get that fact? Where would you find the data from which you could make the tabulation?

A. That would be made to cover everything? Every carload?

By the MASTER:

Q. What was your answer?

A. I have not replied yet.

By Mr. KORBLY:

Q. Inbound, unloaded by the consignee?

A. I was undecided whether you want the cars unloaded on our own terminals, or those that arrive at our rails and destined to points other than our own rails?

307 Q. Well if they are destined to some other point, they are not unloaded here?

A. Well within the city limits, or switching limits, they would be considered destined here but not unloaded on our rails.

Q. I don't care whose rails they are unloaded on, but received from your cars and accounted for and handled by your clerks and reports?

A. I believe that we could get that information, or part of it at least?

Q. Whereabouts could you get it?

A. I could get part of it from my office, I think.

Q. Can you get all of it from your office?

A. Well, just now I couldn't say; I would have to make a few inquiries about the handling of those cars.

Q. Now about the cars that are loaded by the shipper at this terminal in carload lots and shipped out over your lines for the year 1905, could you find out the number of such cars?

A. No sir we don't keep a separate record of that. The cars come to us, you know, from any place from the various connections and are loaded on the track——

Q. (Interrupting.) What per cent of the cars, carload lots now, that come to or pass through this terminal over you- line are loaded here in Indianapolis by the shipper, or unloaded by the consignee?

308 A. Well there is quite a difference on the outbound movement than on the inbound, I should think.

Q. Well take them separately then. What in your judgment is a correct estimate in percentage of the cars that are unloaded by the consignee, inbound cars received over your line as compared to the total number of cars accounted for by your office.

A. Well we have never kept our records separated, so I could not intelligently — that, as to about what proportion?

Q. Can you give an opinion? Well then strike out that question. Is there any way by which you can obtain that information accurately.

A. No sir not accurately.

Q. Is there any way by which you can estimate it.

A. No sir.

Q. It is a fact however, isn't it that a large proportion of the cars that you give us as inbound or outbound cars, passing and received at the Indianapolis terminal are cars that are either loaded by the shipper and sent out over your lines, or cars that are shipped in here and unloaded by the consignee.

A. Yes sir.

Q. More than 80%, more than 90% of those cars are of that character? Is that right?

A. Well I don't know about that. There is a large num-

309 ber of those cars.

Q. I say, more than 90% of those cars passing through and coming in this terminal inbound and outbound, are cars that are either loaded by the shipper or unloaded by the consignee.

A. Well I should judge in that neighborhod at least. There is a large per cent of them.

Q. The most of the classified freight, in fact all of the classified freight, that passes over your platfrom and handled by your freight handlers in the depot, belongs to either the first, second, third or fourth class, that is right isn't it?

A. Yes sir.

Q. And fifth and sixth class freight is always carload lot and loaded by the shipper?

A. Yes, that is true.

Q. Quite frequently the carload lots that are received at this station, this terminal in 1905, and which were unloaded by the consignee, were paid for by the consignee; that is, the freight charges were paid for by the consignee is that right?

A. Yes that is right.

Q. And you had men employed down there for the purpose of making out bills for that freight charge for a carload lot, and you had other men who went around and collected the money?

310 A. Yes.

Q. How many collectors did you have?

A. We employ one collector regularly.
Q. What do you pay him?
A. $66 a month.
—. How many men do you employ in making out these bills which are taken around to the consignees?
A. I suppose that you refer to the expense bills? The bills that are collected?
Q. Yes.
A. Well that work is so divided in our office that we require the services of almost the entire force at certain hours in the day to complete that work to get the business moving early in the day.
Q. That is, for the carload lots?
A. That is for carload lots and all.
Q. About what proportion of the time is used for the carload lots alone?
A. Well that doesn't compare with the other part of it probably; I wouldn't figure over twenty per cent of the time consumed in the carload business as against less than carload business.
Q. In making out the bills?
A. Yes.
Q. And your collector takes those bills around; you have just got one collector?
311 A. Yes that is all; of course we handle a large portion of our business through the mail; we couldn't begin to reach everybody by one collector.
Q. That is on the inbound business.
A. Yes.
Q. Well sometimes you have that same experience with outbound business, carload lots.
A. O yes, we extend credit to our patrons sometimes on the outbound business for their convenience.
Q. And you have expense bills made out for those too?
A. Oh yes, we have expense bills for those.
Q. And the collector collects some of that, and some of that is collected through the mails?
A. Yes sir.
Q. Now the expense of that collector, and the expense for the sending out and making out of your bills is all charged in the expenses of your office force.
A. Yes.
Q. That is, in the figure that you gave us, of $16709.90 for your office force?
A. That is a part of the expense.
Q. The Pennsylvania Railroad Company, which operates a line from Indianapolis to Richmond and east has a terminal in this town, has it not, a freight terminal?
A. Yes sir.
Q. And they have a freight depot?
312 A. Yes.
Q. Now in the testimony of Mr. Saur, on yesterday, he stated he estimated that there were five cars loaded over your plat-

form at the freight station and taken east each day. Can you tell the reason why they load five cars at your freight station which are destined to travel over the Pennsylvania lines going east?

A. Why they were loaded in our depot?

Q. Yes.

A. Why yes. The cars arriving from the west and coming into our depot are loaded miscellaneously with freight for Indianapolis, Columbus, Richmond, Dayton, and other points beyond Indianapolis along the line of the Panhandle road. We are obliged to unload the entire shipment in our freight house in order to check out the Indianapolis freight and also get a proper check on the other freight. In unloading all that freight, we find it convenient to rehandle that stuff and check it into a car direct for the line of the Panhandle road.

Q. Is that custom still adhered to?

A. Yes.

Q. Have you any record on your book as to the number of cars you load in that way each day?

A. No sir, that is not included in that way; it is included
313 in the total number of inbound cars received.

Q. You don't keep that separate?

—. No?

Q. That, as I understand you, was included in the total of the inbound and the outbound cars this morning?

A. In this case I now speak of it is on the inbound cars.

Q. But you said that was included in the total of the inbound cars given this morning,—included in the total of 35241,

A. No that is not it. The total of inbound cars handled on the platform.

By Mr. WILLIAMS:

Q. You don't mean five was included in that? You mean the freight was included in that.

A. Yes, the freight was included in the total number of inbound cars received; that of course was taken out of the cars and loaded properly into a car and delivered to the Panhandle.

By Mr. KORBLY:

Q. I say, of the inbound cars, there being 3004, some of the cars handled this freight you speak of which was transferred to the Panhandle.

A. Yes.

Q. Did you include those five cars in the 6990 out bound?

A. Oh no. That would have no bearing on that question.
314 That would be an inbound proposition entirely.

Q. I know; You reship it though?

A. No it doesn't enter into the outbound freight though; it don't go back over the Vandalia. We only include such freight as we receive and forward over our own line in this outbound movement.

Q. Now if there were 145,998 cars, freight cars, in and out of

Indianapolis, the Indianapolis terminal for the year 1905, and you have accounted for 52,855 in the year 1905——

A. (Interrupting.) That does not include all of the cars; plus the 9994 there.

Q. Plus the 9994 cars; then the difference between the 52,855 plus 9994 and 145,998 would be the number of cars that passed through this terminal for which you do not account, if that number is correct.

A. Approximately so, yes sir.

Q. You have office supplies down there do you not, station supplies?

A. Stationery, etc.?

Q. Yes.

A. Yes, sir.

Q. And those station supplies consist of letterheads and envelopes and waybills and what else?

A. Pencils, pens, penholders, everything pertaining to the work

Q. Is all of that stationery used exclusively in connection
315 with the handling of the freight over the platform.

A. No sir not exclusively.

Q. Eighty five per cent of that stationery is used in connection with keeping track of the carload lots that come into this terminal over your line of road, or the outbound carload lots passing over, passing through this terminal, and over your line of road, is not that a fact?

A. No I should think not; from the use of the stationery there it would be largely consumed on account of the outbound business in making waybills, etc.

Q. That is what I mean: carload lots, etc. Does that include stamps too in that stationery, station supplies?

A. Oh yes, I suppose they figure stamps in there: I don't know anything about that.

Q. Stamps and things of that kind are used almost entirely in connection with carload business?

A. Not necessarily.

Q. Not necessarily, but I say almost entirely; almost don't mean all, but almost all.

A. Our postage stamp bill is not very heavy.

Q. Now to come back to the proposition, you have carload lots going out and carload lots coming into Indianapolis, and then you have carload lots passing through this terminal?

A. Yes.

Q. And all of them you take care of at your office?

A. Yes, sir.

316 Q. Your clerical force looks after it?

A. Yes.

Q. And then your clerical force looks after the tonnage that goes on to the Panhandle?

A. Yes.

Q. And the point that I make is that eighty five per cent of the stationery and office supplies used down in your office is used with

the purpose of taking care of the carload lots inbound or outbound, or passing through this terminal, and about fifteen per cent of that is required to take care of the platform freight and the cars into which they are loaded?

A. I wouldn't say so.

Q. Well isn't that approximately correct?

A. I wouldn't consider myself competent to make such an estimate.

Q. Would you give then an opinion that the percentage was substantially the same as it is to the labor? You said this morning that twenty per cent of the service was required to take care of the inbound shipments over the platform, and eighty per cent of the service was devoted to the carload service, inbound, outbound, and passing through?

A. That referred only to the clerical work.

Q. I understand; but I am now talking about the station supplies. If that is a fair division of the service, wouldn't that be a fair division of the supplies?

—. It would be owing to how they estimate the quantities of them. I know the quantities of waybills used are far in excess of the
317 platform freights, and that applies largely to the movement of platform freight.

Q. Now in taxes Mr. Sauer has charged $149, the full amount of the taxes paid on your freight house down there to the platform service. Now the offices of your employees are in that building, are they not?

A. All of them.

Cross-examination.

Questions by Mr. WILLIAMS:

Q. Mr. Graham the official classification refers to what is known as trunk line territory, and Central Freight Association territory, doesn't it?

A. Yes sir, I believe so, as far west as the Mississippi River.

Q. It extends from the Mississippi River to the seaboard.

A. New York City.

Q. And from the Great Lakes on the North to the Ohio River on the South?

A. That is the way I understand it.

Q. Now that official classification is supposed to give as nearly as it can the different articles that are usually shipped, and dividing them into six classes?

A. Yes sir.

Q. And then the railroad companies issue tariffs based on these six classes, so much for the first, so much for the second, and
318 so much for the others; and when you want to find out what the freight charges are you see under what classification the *the* shipment comes, and then what the tariff rate is to be applied to it; is that the way you g- the rate?

A. Yes that is the way you make the rate.

Q. These official classifications are issued periodically, aren't they?

A. Yes sir, they are revised and issued about every six months.

Q. Do you know what the number of the present classification is, representing the number issued since the first one was issued? What is the number?

A. No, I couldn't tell from memory. I think it is thirty something.

Mr. WILLIAMS: Do you know Mr. Keavey?

Mr. KEAVEY: Number #32.

Q. That means that there have been thirty two classifications issued by the official classification committee?

A. Yes sir.

Q. And isn't it a fact that frequently changes are made in the listing of those articles mentioned under the various —

319 A. Yes sir, they are frequently changed.

Q. Now in the case a road wishes to make a rate outside of their class rate, on articles that come under the official classification, isn't it the usual plan for them to take that article out of the official classification and name a commodity rate for it?

A. Yes, they call that an exception I believe to the classification.

Q. Well those articles that you have under the commodity rate are not governed by the official classification at all?

A. No, sir, as I understand it?

Q. If you want to use a rate on a commodity you refer to your circulars from the general freight office and see what it is?

A. Yes.

Q. And the official classification has nothing to do with it?

A. No sir.

Q. Don't you know, or do you, I don't know how far your information goes about that,—don't you know that rates have been largely reduced within the last eight or ten years on the Vandalia road by taking articles out of the official classification and putting them on the commodity list?

A. Yes, I am aware of that.

Q. So that when you would say that there has been no change in the rates, or when it has been suggested that there have been no changes in the rates, you would not mean to say that there

320 was not a change by putting things on the commodity list, giving them lower rates than on the class list?

A. No I would not.

Q. When you handle through your office the billing of the carload shipments usually one bill covers it, don't it?

A. Yes one bill, one heading.

Q. When you handle a carload of miscellaneous freight outbound that has been handled over your platform, does one way bill cover it?

A. Not in all cases, no sir. It requires several waybills or a number sometimes.

Q. Don't you have to have a waybill for every shipment that is made from one consignee to one consignor?

A. Yes sir.

Q. You may have a number of articles in that one shipment from John Jones to William Smith, and in that case you would make one way bill.

A. Yes we usually make a separate waybill for each separate consignment, for each shipment,—for instance to the different consignees the shipper would make shipments to.

Q. So that the waybills you would make for freight loaded in to one car might and do oftentimes exceed in number the
321 number of waybills you would issue for a carload?

A. Oh yes by far.

Q. And when you come to estimate the time that your clerical force puts in on waybills, and try to compare the time they put in on waybills, covering platform freight with the waybills covering carload lots, you would have to have the freight bills in each case?

A. To accurately arrive at it, or even approximately.

Q. Because when you have the number issued in each case, you would still have left as an unknown quantity the relative time required to make out each one of the waybills?

A. Yes sir.

Q. And it might take less time to make a waybill of one carload than it would to make out a waybill of a miscellaneous lot of packages although they might be going from one person to another person.

A. Yes sir.

Q. As a matter of fact you never have attempted in any way to distinguish between the time — takes for your clerical force to take care of the billing of platform freight as compared with the time that it would take for carload freight have you?

A. No sir, we have made no attempt to do so.

Q. Now when you make a waybill for carload freight outbound you don't have to make any expense bill for that do you?

A. No sir. You simply make the billing and the agent at
322 the point of destination makes out an expense bill and collects it.

A. He makes out the expense bill.

Q. But for all freight that comes into your station, carload and otherwise which you have to deliver, you have *you have* to make out the expense bills, which means the amount collectible on that freight, and your office becomes chargeable with the amount of those bills and you have to account to the auditor for them?

A. Yes.

Q. Now one expense bill would cover one carload, wouldn't it?

A. Yes sir.

Q. It would take as many expense bills to cover platform shipments inbound as there were consignees, wouldn't it?

A. Yes sir.

Q. So that the number of expense bills that you would issue and handle on platform business would largely exceed number, pro-

portionately I mean, the number that you would issue and handle per carload lot?

A. Yes sir.

Q. You would issue one expense bill for a carload, and you would issue as many for a carload that went over your platform as there were consignees?

A. Yes sir.

Q. And you have never made any estimate have you or
323 collected any data that would enable you to say with any approximation or certainty how much time it took your men to make out expense bills on platform freight compared with the time it took them to make out expense bills on carload freight?

A. No sir I never have.

Q. You have inside of the station there haven't you two tracks?

A. Inside of the station, yes sir.

Q. And outside of the station immediately adjoining it you have several tracks.

A. Two tracks is all we have south of it.

Q. That is, on the south side?

A. Yes sir.

Q. And on your platform which receives the freight from the city merchants here going out to points on the line, that is on the north side of the freight house?

A. Yes sir.

Q. And the cars into which that freight is loaded are placed for you on the track immediately adjoining that platform?

A. Yes, inside of the house.

Q. Then on the south side, what do you do there? Ship out?

A. From the south side of the freight house?

Q. Yes.

A. That is the platform from which out inbound business is unloaded.

324 Q. And taken away from the station on the south side?

A. Yes sir.

Q. And the cars bringing that stuff into the city are placed on the south track, south of the station?

A. Yes sir.

Q. Now when a carload of freight comes in, a full carload, and it doesn't have to pass through the platform to be assorted and delivered to different consignees do you set it on one of the tracks south of the station there?

A. If it is of the class of merchandise, or a commodity, that is to be delivered to a near by dealer or patron.

Q. You try to accommodate him?

A. We do try to accommodate him, by placing the car where it would be most convenient.

Q. And if it is not placed there then we have some tracks immediately west of West St.?

A. Yes sir.

Q. Where they place cars for unloading?

A. Yes sir.

Q. And where teams go there to unload?
A. Our regular team tracks.
Q. In the same way do you place cars for loading by shippers on those tracks that I have mentioned?
A. Yes sir.
Q. As the tracks may be selected; as may best accommodate the shipper, nearest to him?
325 A. That is it.
Q. But whether they are unloaded or loaded, on those tracks that I have mentioned the billing passes through your office?
A. Yes.
Q. And you bill the outbound and collect your freight on the inbound?
A. Yes sir.
Q. And the only difference is that your platform labor don't handle that stuff?
A. That is all.
Q. Now when a car is loaded on an industrial, at an industrial establishment in the city here locally, on a track which belongs to us, they furnish you the shipping directions as you have explained, and you issue a waybill, and bill of lading on them, and that is the end of your connection with that shipment.
A. Yes, after we bill the freight.
Q. You send the waybill to the auditor's office and give them to the conductor, but you have nothing more to do with that shipment?
A. That is all.
Q. Now there are cases where cars are loaded on tracks of the Big Four to go over our lines.
A. Yes.
Q. I don't think you explained that in your testimony so far; what have you to do in the way of getting those cars started over our roads?
326 A. The consignor, after he has completed the loading of his car on an industry located on the line of the Big Four for instance will prepare his shipping bill and hand it to the conductor or crew of the Big Four.
Q. Switching crew?
A. Switching crew, who will in turn make a delivery to the road connecting with our line, at the present time it is delivered to the Belt, and by the Belt to our line with the shipping bill. That is the method.
Q. The only difference being that it comes to your depot from the Big Four and Belt instead of being sent to you from the industry located on your own tracks.
A. That is the only difference.
Q. This book that you have had here this morning, and from which you have given the figures about which you have testified is an impression book containing copies of reports that you have made isn't it?
A. Yes sir.
Q. To whom do you report the conduct of your station?

—. At the present time I report to Mr. J. W. Coneys the terminal superintendent at Indianapolis.

Q. And previous to that you reported to the superintendent, whoever the superintendent might be, and you make these reports monthly.

A. Yes sir.

Q. And the purpose of that is, is it not to give to the superintendent who has charge of your expenses at your station an
327 idea of the men you have employed, and the tonnage you are handling with the work you are doing with the force you are allowed.

A. Yes sir, that is the idea exactly.

Q. They are not made up into any permanent form that you know of?

A. No sir, not that I know of.

Q. And you simply keep an impression book copy of them for your information?

A. For reference purposes, yes sir.

Q. So far as expenses made outside of your station, immediately outside of your personal supervision, do you — anything about that?

A. Nothing at all sir.

Q. You don't take any account of them?

A. No sir.

Q. You don't keep any account of the supplies furnished do you?

A. No sir.

Q. You get them by making a requisition for the amount and articles required?

A. Yes sir.

Q. And your office is charged with the amount?

A. Whatever the cost is, it is not given.

Q. You haven't any way of keeping account of expenditures made for keeping up the tracks in your freight house?

328 A. No sir.

Q. Or the yard tracks?

A. No sir.

Q. Or keeping up expenses in the way of keeping up the engines which are furnished you for handling the freight?

A. No sir.

Q. And you have no account of cars except those that you handle?

A. That is all.

Q. By pulling them, or loading or unloading them.

A. That is all.

Q. You know nothing about them, and have no record concerning the number of cars handled at this terminal regardless of whether you touch them or not.

A. No sir.

—. You can't tell whether there were 45,000 cars handled here?

A. No sir.

Q. And all that you know in reference to the expenditures of your station is shown by this copy that you keep of your reports made to the superintendent of the division?

A. That is all.

Q. And that principally is your payroll?
A. Yes sir.
Q. Now if a carload of miscellaneous freight was received into your station from a line west, or from any other division of the Vandalia, and a part of that miscellaneous lot of freight was to go to points on the Pennsylvania, a part to points on the Big Four,
329 to points on the C. H. & D., you have a lot of that kind of stuff to handle during the year, don't you?
A. Yes sir.
Q. What would you do with that stuff after you unloaded it from the car in which it came and sorted it out on the platform? What would be your duty? To deliver it to the road for delivery to points to which it is consigned?
A. Yes sir.
Q. How would you deliver that to roads other than the Pennsylvania?
A. To roads other than the Pennsylvania we would deliver it by dray.
Q. And the cost of that draying would be payable by the delivering company, wouldn't it?
A. Yes sir.
Q. When in turn any of these roads had any of the miscellaneous package freight for you, they would send it up to you by dray to your place?
A. Yes sir.
Q. And they would pay the expense of delivering that freight at your freight house?
A. Yes sir.
Q. Now the interchange of business between the Vandalia and Pennsylvania is very much larger than it is with any other road?
A. Yes sir.
Q. So instead of sending to the Pennsylvania this miscel-
330 laneous package freight by dray, you find it more convenient as I understand, to have a car sent into the freight house there and you pile all of this stuff intended for conveyance there to points on the Pennsylvania lines and send it by that car over to the Pennsylvania road?
A. Yes sir.
Q. Instead of by dray.
A. Yes sir.
Q. But you have handled it as you would if you sent it by dray.
A. Yes sir.
Q. You take it out of the car, sort it, and put it into a car instead of sending it over by dray?
A. Yes sir.
Q. And you find that method more convenient and economical?
A. Oh yes, and it expedited the movement of the freight.
Q. And that, as I understand is the meaning of these five cars which he referred to as east bound?
A. Yes sir.
Q. But they were not east bound any further than the Pennsylvania station were they?

A. No sir, they were properly transferred the same as if we put the freight on the dray and hauled it over.

Q. Then they would have to take it out and sort it and ship it to the various stations?

A. Yes.

331 Q. They might use that car and put some other freight in?

A. If so disposed they could do that, yes.

Re-examination.

Questions by Mr. KORBLY:

Q. Now there is a certain amount of freight received over the platform down there from the inbound cars and a certain amount shipped out on the outbound cars, isn't that right?

A. Yes sir.

Q. On the outbound cars. Now you could arrive at the cost of the tonnage, handling the cost of the inbound and that of the outbound separately, couldn't you?

A. Yes we do that, we show that as nearly as possible.

Q. You have it altogether by taking this freight which ought to be chargeable to the platform force together with the freight which may be chargeable, and properly chargeable, to the handling of that other freight which is not handled by the platform force; but when you have thirteen cars coming in on an average per day, and twenty-four going out on an average per day, you would not say the cost of handling the freight going out would be equivalent to the cost of the handling of the freight coming in would you? It would just about cut it in two.

A. It would depend largely on the tonnage in that case, if we were going to consider it exactly.

Q. If you have ten thousand pounds of freight handled over your platform, and four thousand comes in and six thousand goes

332 out, and it costs you ten thousand dollars to handle the freight, then six thousand dollars would be chargeable to the freight going out, and four thousand dollars to the freight coming in wouldn't it?

A. Well in about the same ratio. I imagine it would be about the same ratio. The expense would be about the same.

Q. Where you have a shipper say in Indianapolis shipping stuff to Brazil, Indiana, and there are half a dozen consignees in Brazil, to which the shipper is sending the freight, you would only use one way bill for the whole shipment.

A. We would make a separate item for each consignee.

Q. You would only use one waybill, one heading?

A. One heading. Indianapolis to Brazil, with the various consignees noted thereon.

Q. Now about the change in the classifications. This is your official classification book isn't it? (Handing book to witness.)

A. Yes sir.

Q. And on that page what does it tell you?

A. This represents the issues of the official classification.

Q. When was the first issue?

A. Jan. 1, 1887.

Q. When was the last?

A. 1908, Jan. 1. Now there is still another one. I think
333 there is an issue effective July 1. Well that is it.

Q. Then the last issue would be July 1 1908? And the first issue would be in 1887?

A. Yes.

Q. Now when you speak about the changes; and the dates are given on this page in the official classification,—I will ask you if it is not a fact that the most of the changes made were additions to the classification, that is to say, goods not theretofore enumerated in the classification, were classified? Not changes made by changing from one class to another class, so much as additional classifications added to this classification?

A. Well I have noticed a great number of these supplements that come to the official classifications, and as you say there are additional items of commodities which heretofore had not been in there and in many instances they have been reclassified, different articles, they would make it more specific.

Q. Downward or upward in the classification?

A. I wouldn't say as to that.

Q. In other words the reclassification—when the reclassification takes place it is usually towards the higher class, and not the lower classes, towards Class 1 and not towards Class 6?

A. I would not say that; sometimes they make the rates lower.

Q. Now you spoke of these rates being lowered by items being taken out of the classifications and put in the commodity
334 lists.

Q. When in your recollection was such a change as that made?

A. I couldn't recall the first time.

By Mr. WILLIAMS:

Q. Do you remember a time when we did not have a commodity list?

A. No I do-'t recall when we did not have a commodity list.

By Mr. KORBLY:

Q. I am not asking you about a time when you did not have a commodity list; I am asking you particularly about the time when some article which was classified in the official classification was taken out of the official classification and put in the commodity list.

A. Well I Couldn't tell you exactly.

Q. You don't remember now that ever having been done do you?

A. Oh it is done, such commodity tariffs have been issued and are being issued.

Q. Can you name one of them?

A. I cannot; I know we have one in force now, but I cannot give you the number of that.

Q. I will ask you if articles are not taken out of the commodity list and put in the classification?

A. I couldn't say as to that.

Q. That has been done, hasn't it?

335 A. I couldn't say whether they have been taken from the commodity list and put in the classification.

Witness excused.

336 INDIANAPOLIS, INDIANA,
MONDAY, *September* 14, 1908—10 o'clock a. m.

The hearing was resumed before the Master: Present, the same as at the last session.

WILLIAM HODGDON, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. KORBLY:

Q. Please state your name?

A. William Hodgdon.

Q. What if your residence, Mr. Hodgdon?

A. Pittsburgh, Pennsylvania.

Q. What is your business?

A. Freight Traffic Manager of the Pennsylvania Lines west of Pittsburgh.

Q. How long have you been acting in that capacity for the Pennsylvania Lines?

A. Since January, 1907.

Q. Prior to January, 1907, what position did you hold, if any, with the Vandalia Railroad Company?

A. General Freight Agent of the Vandalia Railroad.

Q. How long did you hold that position?

337 A. About three years.

Q. You were connected with the Vandalia Railroad Company as General Freight Agent in the years 1904, 1905 and 1906, were you not?

A. Yes sir.

Q. And what branch of the Vandalia were you the General Freight Agent of, the entire branch?

A. All of it—that is to say, the Saint Louis Division of the Vandalia Company, running from Indianapolis to East Saint Louis.

Q. And the I. & V.?

A. When the I. & V. was a part of the Vandalia Railroad; not when it was the I. & V. Railroad.

Q. That was from January first, 1905, wasn't it?

A. I think that is the correct date. Whenever it was made a part of the Vandalia Railroad.

Q. How long have you been in the railroad business, Mr. Hodgdon?

A. About twenty five years.

Q. And what part of that time in connection with the freight department?

A. All of it.

Q. Prior to your taking the position of general freight agent, of the Vandalia Railroad Company, along about the first of the year 1904——

A. (Interrupting.) Last of 1903 it was, in fact.

Q. Prior to that time, what position did you hold with
338 any railroad company as General Freight Agent?

A. General Freight Agent of the Cleveland, Akron & Columbus Railroad at Cleveland, Ohio.

Q. How long have you been connected with railroad service as a General Freight Agent?

A. I think my first position as a General Freight Agent was in 1893 or '94, I guess it was.

Q. Mr. Hodgdon, when you were General Freight Agent of the Vandalia Railroad company from some time in the year 1903 to January 1st, 1907, it was your duty, among other things to establish rates for the Vandalia railroad company, isn't that the fact?

A. Well, I did establish rates.

Q. Made them?

A. And controlled the making of them, yes.

Q. You controlled the making of the rates?

A. Yes.

Q. And that included the class rates between Indianapolis and the Illinois state line on the Saint Louis Division of the Vandalia Railroad Company?

A. No sir; they were made long before my connection with the road.

Q. I say they were made under your supervision, after your connection with the road?

A. Yes.

Q. If there has been any changes made in those rates during your connection with the railroad company, they would have been
339 suggested and made by you?

A. They might have been suggested and made by me or they might have been suggested to me and approved by me.

Q. Now, Mr. Hodgdon, you testified, did you not, before the Indiana Railroad Commission in the matter of the hearing of the petition of Schnull & Company against the Vandalia Railroad Company for the reduction of rates some time in the year 1906, did you not?

A. I testified before the Commission in that case, yes sir.

Q. Then Mr. Hodgdon, you testified before the Commission in the matter above referred to in the last question upon the petition for a rehearing filed by the Vandalia Railroad Company before the Indiana Railroad Commission, did you not?

A. Yes sir; I testified in the rehearing.

Q. And I will ask you if upon the rehearing referred to, upon the petition for a rehearing above referred to, if you did not testify that

the following class rates from Indianapolis to the points that I will name, between Indianapolis and the Illinois state line, on the Vandalia Railroad, for the Saint Louis Division, were not fair and reasonable rates, that is to say:

Indianapolis to Ben Davis, first class, 10 cents a hundred pounds;
Indianapolis to Ben Davis, second class, 9 cents;
340 Indianapolis to Ben Davis, third class, eight cents;
Indianapolis to Ben Davis, fourth class, six cents;
Indianapolis to Ben Davis, fifth class, five cents;
Indianapolis to Ben Davis, sixth class, three cents;
Indianapolis to Bridgeport, first class 10½ cents;
Indianapolis to Bridgeport, second class, 9½ cents;
Indianapolis to Bridgeport, third class, 8½ cents;
Indianapolis to Bridgeport, fourth class, 6½ cents;
Indianapolis to Bridgeport, fifth class, 4½ cents;
Indianapolis to Bridgeport, sixth class, 3 cents;
Indianapolis to Oak Plain, Plainfield and Gibson, first class, 11 cents.
Ditto, second class, ten cents;
Ditto, third class, nine cents;
Ditto, fourth class, seven cents;
Ditto, fifth class, five cents,
Ditto, sixth class, three and a half cents.
Indianapolis to Cartersburg and Clayton, Indiana, first class, 11½ cents;
Ditto, second class, 10½ cents;
Ditto, third class, 9½ cents;
Ditto, fourth class, 7½ cents;
Ditto, fifth class, 5½ cents;
Ditto, sixth class, four cents.
Indianapolis to Pecksburg, Amo and Coatesville, first class 12½ cents;
Ditto, second class, 11½ cents.
341 Ditto, third class, 10½ cents;
Ditto, fourth class, eight cents;
Ditto, fifth class, six cents;
Ditto, sixth class, five cents;
Indianapolis to Fillmore, Alameda, Greencastle and Linedale, Indiana, first class, 14 cents;
Ditto, second class, 12½ cents;
Ditto, third class, 11½ cents;
Ditto, fourth class, 8½ cents;
Ditto, fifth class, 7 cents;
Ditto, sixth class, 6 cents.
From Indianapolis to Hamrick and Brazil, Indiana, first class 16 cents;
Ditto, second class, 14½ cents;
Ditto, third class, 13½ cents;
Ditto, fourth class, 10 cents;
Ditto, fifth class, 7½ cents;
Ditto, sixth class, 5½ cents.

I will ask you if you did not testify before the Indiana Railroad Commission on the petition for a rehearing in the matter above referred to, that those rates I have just enumerated were reasonable and fair rates.

Mr. WILLIAMS: I will object more for a matter of despatching business than anything else. As to this witness, that is an impeaching question, and there is no ground laid for impeaching the witness at all.

342 Mr. KORBLY: This is not an impeaching question. It is not intended to be an impeaching question. You allege in your bill of complaint that the rates as now fixed and charged by the Vandalia Railroad Company between Indianapolis and the Illinois state line are reasonable, and that you could not possibly do business with a less rate. Now, that is a part of the issue in this case. Mr. Hodgdon, according to his own testimony, during his connection with the Vandalia Railroad Company as General Freight Agent, had the authority to create and establish rates, and while acting in his capacity as General Freight Agent, he voluntarily suggested, as the evidence will show that the rates I have enumerated were fair and reasonable, and he so considered them. I believe under the issues of the complaint that this evidence is entirely competent.

The MASTER: This is your witness. It seems to me it would be more regular to ask him what are the reasonable rates, or were reasonable rates during the time referred to by your question, and if the witness has not testified about these matters at some other time. But, as I understand the functions of the Master, the rulings are provisional, and the questions that are raised upon them go before the Court anyhow, so the witness may answer the question, subject to the objection.

343 A. I have no recollection of any such testimony at any time in any of these hearings. If I did, it must have been, however, with qualifications. If I made such answer it must have been with qualifications, I think.

Q. Mr. Hodgdon, after the decision—the first decision rendered by the Indiana Railroad Commission, and prior to that time, did you compile a table of class rates that you intended, or that was intended to have established by your road, as well as other roads in Indiana?

A. I don't quite get the time that you state there.

Q. Well, prior to your leaving the Vandalia Railroad Company in 1907?

A. Just ask me that question again.

Q. (Preceding two questions read.)

A. I compiled a table of class rates which was presented in some of the conferences and in one of the hearings intended to be a basis for some compromise adjustment of the rates out of Indianapolis.

Q. Do you remember what those rates were?

A. I cannot carry them in my head, sir.

Q. Have you a copy of them?

A. Not in my possession here. I have a copy.
Q. Do you know where you can secure a copy?
A. I know I can secure one in my office at Pittsburgh, but I am not sure whether I can elsewhere or not.
Q. Will you, upon your return to Pittsburgh, make a copy of the copy that you have, and send it to Mr. Evans, the stenographer of this Court, so that he may make it an exhibit in this hearing?
A. Yes sir.
Q. You will do that, will you, Mr. Hodgdon, if you please?
A. Yes sir.

(Later in the hearing a copy of the table referred to was found by Mr. Hodgdon, in his satchel, at the hotel, and in answer to a question by Mr. Korbly, the rates there given were copied into the record. See in this transcript towards the close of Mr. Hodgdon's testimony, pages 284-286.)

Q. You remember, generally, do you not, about the result of your revision of those rates—the revision we are now talking about?
A. There wasn't any result of the revision, because there wasn't any revision.
Q. No, but I mean the proposed revision.
A. Well, there wasn't really any result to it.
Q. Well, you came to some conclusions didn't you, in these matters, when you finally compiled your figures, didn't you?
A. These figures were first presented to the Commissioners as a possible basis upon which revisions might be based.
Q. Yes, and before the revision was submitted to the Commissioners, you came to the conclusion in your own mind, did you not—you came to a conclusion in your own mind, did you not—as to the proposed figures?
A. I don't catch your point.
Q. Before those figures were presented to the Railroad Commission in that matter of Schnull & Company against the Vandalia Railroad Company, you had compiled those figures?
A. Yes.
Q. You had come to some conclusion in your own mind with reference to those figures, had you not?
A. Well, the conclusion I came to——
Q. (Interrupting.) I am not asking you for the conclusion you came to, I am asking you whether you did not have some conclusion in your own mind concerning those figures?
A. Certainly.
Q. Now, did you have any conclusion as to whether or not those figures which you presented to the railroad commission were reasonable and fair rates, if they had been adopted?
A. No sir; I don't think I had any such conclusion. That was open to discussion, not only with the Commission, but with all the other railroads.
Q. I will ask you if upon the hearing before the Railroad Commission upon the petition for a rehearing before the

Railroad Commission in the matter of Schnull & Company against the Vandalia Railroad Company, if this question wasn't asked of you by Mr. Williams: "Now, taking into consideration the situation generally in this territory covered by the C. F. A. scale, do you think that those rates and the bases on which you figure them are reasonable?" and if you didn't answer to that question, "Yes sir."?

A. Of course, I can't distinctly remember, but I think that that is correct, and that I would answer it the same way under the same circumstances applicable to that time, you understand.

Q. And I will ask you if in response to this question propounded you by Mr. Williams in the same matter you did not make this answer: "Q. Would you be willing to adopt them for the Vandalia, if you could do so without disturbing the whole situation? Answer: I would, yes sir."

A. I think that is correct.

Q. When the letters "C. F. A." are used, what do you mean by C. F. A.?

A. Central Freight Association territory—that is the territory East of the Mississippi, north of the Ohio and Potomac, reaching North to the United States-Canada line and east to the Sea Board;—no, east of the western terminii of the trunk lines.

347 Q. And South of the Great Lakes? It goes as far north as the Great Lakes?

A. Yes sir.

Q. The C. F. A. don't have anything to do with the rates from Chicago west?

A. No.

Q. In other words, if I understand you correctly, the railroads, or most of the railroads within the territory East of the Mississippi River, north of the Ohio River, west of Pittsburgh, and South of the Lakes have gotten together and agreed upon a scale of rates and that is known as the Central Freight Association rate, or C. F. A. rate, is that right?

A. That is not exactly a correct statement.

Q. Please give me a correct statement.

A. There is a scale of rates which is compiled, and which is the minimum class rate basis, which is in effect for given distances upon railroads in that territory; in other words, your statement makes the scale the basis upon which the tariff is made and my statement is that it is a scale drawn from the rates made by the railroads showing the minimum rates.

Q. And the C. F. A. class rates, as now used by the Pennsylvania Lines west of Pittsburgh and East of Indianapolis?

A. As the minimum.

348 Q. In other words, the C. F. A. scale is the rate used by Pennsylvania lines in the Central Freight Association territory, as you have testified?

A. No sir, it is not.

Q. The C. F. A. class rates governs from Indianapolis east on the Pennsylvania lines, does it not, in the state of Indiana?

A. On the P. C. C. & St. L. out of Indianapolis, it governs.

Q. That is, it governs on the line South to Louisville, from Indianapolis to Louisville, and Indianapolis to Jeffersonville, on the Pennsylvania lines, from Indianapolis, and from Indianapolis to the Ohio State lines running east, and out of Indianapolis running north?

A. The minimum rates are used in that territory.

Q. And that is true also, Mr. Hodgdon, with reference to the Vincennes division of the Vandalia Railroad Company?

A. Yes sir.

Cross-examination.

Questions by Mr. WILLIAMS:

Q. Mr. Hodgdon, this Central Freight Association scale, as it is so called, and the minimum scale, as you call it, provides for a rate for each of the six classes of freight upon a mileage basis principally, doesn't it?

A. Yes sir.

Q. Not a strictly mileage basis?

A. Five and ten miles groups. Strike that answer out,
349 and I will make it a little more accurate. On a group basis, in some instances five miles, sometimes ten, twenty and as high as fifty miles groups.

Mr. KORBLY: Mr. Williams, will you pardon me just a minute, and I will ask Mr. Hodgdon one or two more questions.

Mr. WILLIAMS: Yes.

By Mr. KORBLY:

Q. Coming back to that table of proposed rates, class rates, referred to in a previous question, do you remember, Mr. Hodgdon, upon what basis those rates were figured?

A. The general basis, I think I recollect.

Q. Will you please give a statement as to what the general bases were?

A. My memory is that above 75 miles, the minimum rate as shown by the C. F. A. scale were used. In those 75 miles they were higher than those rates. The differences, I couldn't state.

Q. To refresh your recollection, Mr. Hodgdon, isn't it a fact that you charged for the first five miles the following amounts for the different classes:

For the first class you charged six cents;
Second class, five cents;
Third class, four cents;
Fourth class, three cents;
350 Fifth class, two cents;
Sixth class, one and one-half cents.

And then you added to those rates the terminal charges as follows:

For the first class, 4 cents;
For the second class, four cents;

For the third class, four cents;
For the fourth class, three cents;
For the fifth class, two cents;
For the sixth class, one and a half cents;

And that gave you the rate from Indianapolis for the first five miles; and then for each additional five miles you added one-half cent for the haul per 100 pounds. Now, isn't that the basis upon which you figured that proposed table of rates, Mr. Hodgdon?

A. Well, I can't carry those figures in my mind, but it sounds like the basis.

Q. You don't remember though that the figures I have read to you are the figures that you gave as forming the basis?

A. I do not, but I can easily check them.

Q. How can you check them up?

A. I have them in my possession.

Q. Well, when you send that table of rates proposed by you to the stenographer, won't you please also send with your table your statement as to the basis of figuring the rates proposed?

A. Yes; I will do that.

351 Cross-examination resumed.

Questions by Mr. WILLIAMS:

Q. This C. F. A. scale provided rates up as high as 450 miles didn't it?

A. Yes.

Q. And there it stopped?

A. Yes sir.

Q. And the rate, the lowest rate named in that schedule for first class was seven and a half cents, wasn't it?

A. Yes sir.

Q. And then it progressed as the miles increased with a spread between the classes from one to six, isn't that the way it went?

A. Well, that statement don't apply until you get up above about 30 miles; I am not sure but what the five mile rate is 7 cents first class, but the seven and a half cent rate is practically the rate for all the distances up to 30 miles.

Q. Well, I guess you are right about that; I made my statement too broad.

A. Yes sir; after that it progresses.

Q. Now, after you came on the Vandalia Railroad as General Freight Agent, did you find that scale in force on the lines of the Vandalia? That was before the I. & V. became a part of the Vandalia.

352 A. There were no places on the Vandalia where that scale was in effect at that time.

Q. At that time, and afterwards, as long as you were connected with the Vandalia, was that scale in effect generally in this territory on roads leading out of Indianapolis?

A. No sir.

Q. It was not in effect on the Big Four, was it?
A. No sir.
Q. You remember, don't you, that the railroad commission of Indiana, on the petition of Schnull & Company, to which reference has been made fixed a scale of rates from here to the Illinois state line, and then granted a rehearing?
A. Yes sir.
Q. Now, wasn't it proposed during the time that the case was pending? Do you have in mind exactly when it occurred with reference to the rehearing, or while that case was still alive before the Commission? Wasn't it proposed that the shipping interests and the railroads should get together and see if the matter could not be adjusted?
A. Yes sir.
Q. And didn't you, and some other railroad men, including a Big Four representative, have a conference with a committee of the shippers in the presence of the Commission, with reference to an adjustment of the rates, not only on the Vandalia, but throughout the Indianapolis territory?
353 A. A committee of the railroads had a conference with the Commission, and the Commission invited the shippers to join, and the railroads with them.
Q. And you all met before the Commission?
A. Yes sir.
Q. Informally?
A. Yes sir.
Q. Now, was it not in view of that conference, and an effort to get an adjustment of the rates, that you prepared this scale as a suggested scale that might be adopted?
A. Yes sir.
Q. And the shippers objected, didn't they?
A. Yes.
Q. Virtually—that is, they would not agree to it?
A. That is true.
Q. Now, so far as the Central Freight Association scale was concerned, the scale that you proposed was higher up to 75 miles, wasn't it?
A. Yes sir.
Q. And after 75 miles you followed closely, if not accurately, the C. F. A. scale?
A. I think I followed exactly the minimum scale of the Central Freight Association.
Q. You regarded the Central Freight Association scale as too low for distances up to 75 miles, didn't you?
A. Yes sir.
354 Q. Now, as to 75 miles and over, the rates called for by the C. F. A. scale were then, and had been for a number of years generally in force in this Central Freight Association territory, hadn't they, for 75 miles and over?
A. Yes sir. I want to qualify that statement, however. The

mileage rate of that scale were not what you might call in effect, generally, in the Indiana territory.

Q. No, what I should have said, perhaps, was this: For instance, a 75 mile rate as fixed by the C. F. A. scale would not be absolutely used for 75 miles, but the entire group rate as fixed by the C. F. A. scale would be used for that 75 miles?

A. That was the customary method, yes sir.

Q. They would use the rates of the C. F. A., but applied it to mileage beyond 75 miles?

A. That was the customary method of applying a higher rate, when the road felt that the C. F. A. scale was too low upon the mileage.

Q. Now, you felt when you proposed this scale as a suggested compromise with the shipper, that if all of the rates out of Indianapolis could be adjusted by all the roads on that basis that it would afford a reasonable return to the railroad companies? That was your idea, wasn't it?

355 A. That, in a general way, was the idea that I had. Specifically, I felt that the rate adjustment question was a ragged one, with inconsistencies which might be open to criticism; that the attitude of the shippers, the attitude of the public as evidenced in the passage of the rate law and the establishment of the Commission, put the railroads on the defensive, so that if inconsistencies existed, whether they were important or *important*, they were a dangerous element, likely to cause antagonism that would be of serious consequences, and that we could afford to take the chance of what reduction of revenue might come out of a revision on this basis, rather than to jeopardize ourselves in the matter of such consequences as I have referred to; therefore, I made this scale, and argued along that line with other roads to induce them to take the same view of it that I did.

Q. There was a great diversity of rates on the different roads, wasn't there?

A. Yes.

Q. And you felt that a more uniform rate would be better from every point of view, both for the railroads and the shipper?

A. Yes sir.

Q. And what you meant by the adjustment at that time being ragged was lack of uniformity in rates on the various roads leading out of Indianapolis?

A. Yes sir.

356 Q. Had you at the time you made that scale, Mr. Hodgdon, any definite information whatever as to what effect it would have on the revenues that had been previously derived from the existing scale in force on the Vandalia, or any other road?

A. Not at the time I made the scale.

Q. Since that time have you been furnished any information of that character?

A. Yes sir.

Q. With the information thus possessed by you now, would you say that that scale as you suggested by way of a compromise with

the shippers and the public was high enough to yield a fair return to the railroad companies for handling this class freight?

A. Well, the analysis of the business and the application of these figures to the traffic showed that those figures on the old T. H. & I. railroad, those figures applied on the traffic of the old T. H. & I. railroad would about pay operating expenses and enough surplus to contribute from the traffic affected, as would be necessary to pay fixed charges, and no stock interest; I think that is about what the result was, Mr. Williams.

Q. That they would not figure enough to yield a profit?

A. Yes sir. I have lost the gist of those figures, but the general conclusion that I reached from the analysis of those figures was that those rates would not yield a profit that would carry us through so far as this class——

357 Q. The figures that you presented?

A. Yes.

Q. Have you in your possession, Mr. Hodgdon, figures showing what revenue would have been yielded by those figures had they been applied to the traffic actually handled, the class traffic actually handled in the years 1904, 1905 and 1906.

A. I have those figures; I think they cover that period, yes sir.

Q. Where are they? Have you them with you here?

A. Well, as a matter of fact, I have in my satchel some papers that were handed to me as the files on this subject. I didn't know what I was expected to contribute here, and it is possible that those figures are in those papers. If they are, they are in my satchel here in Indianapolis at the hotel.

Q. Where is your satchel? At the Claypool?

A. Yes sir.

Q. Mr. Hodgdon, you never had any experience, have you had in the operating department of a railroad?

A. No sir.

Q. You have no education on the subject of operating expense?

A. No sir.

Q. And your idea of the cost of moving traffic, or the operating expense of the road, is derived from the annual results, is it not as shown by the reports of the Company?

358 A. Yes sir.

Q. And all you have in mind in analyzing figures connected with your department is the general ratio for operating expenses to earnings, is it not.

A. That is all I take into account.

Q. The Indianapolis and Vincennes Division of the Vandalia, prior to the consolidation, has been operated, has it not, by the Pennsylvania interests.

A. It has been operated by the P. C. C. & St. L. Railroad Company. That is the only difference.

Q. Well, that is where you are mistaken, but whether it was operated by the P. C. C. & St. L. Railroad or not, is immaterial. It was actually operated under a lease with the Pennsylvania Railroad Company, but I think it was in the Southwest System.

A. I know it really belonged to the Pennsylvania Company, but I thought it was operated by the P. C. C. & St. L.

Q. You allied it in your own mind with the southwest system of the P. C. C. & St. L.?

A. Yes sir.

Q. But while it was under the control of the operating officers of that system, it was, in fact, leased to the Pennsylvania Company. The rates that you found there were in use by the officers of the road before you became General Freight Agent of the Vandalia, were they not?

A. Yes sir.

359 Q. And you regarded them as too low on that division?

A. Yes sir.

Q. I will ask you if it is not a fact that about the time that you were figuring upon a readjustment of those rates, the law creating the Railroad Commission of Indiana was enacted, and you simply deferred matters for future development?

A. Yes sir.

Q. And the Schnull case was brought very soon after the Railroad Commission law took effect, wasn't it?

A. Yes sir.

Q. So you made no changes on the Indianapolis and Vincennes Division while you were on the Vandalia. You left the rates just as you found them?

A. I left the rates just as I found them.

Q. Believing, as I said before, that they were too low?

A. I felt that very positively.

Re-examination.

Questions by Mr. KORBLY:

Q. Mr. Hodgdon, you spoke about the reason for your having proposed the scale of rates different from the one that had been in vogue by the Vandalia Railroad Company, and you suggested that the reason which controlled you in proposing a new scale of

360 rates was the expression from the people of — state that they wanted ra. eduction and created the Railroad Commission in the interest of the shippers and the public generally, and in order to avoid consequences which you thought would be serious; and generally that was your statement, as I recollect, made to Mr. Williams a few minutes ago. Now, when you said that you wanted to avoid the consequences that might follow, unless a uniform rate was established by the railroads of Indiana, what did you have in mind as probable consequences, if that uniform rate was not agreed upon by the railroads?

A. Just what happened?

Q. What?

A. Everybody got scared to death and we had a panic.

Q. So, when was it that you first began to figure upon these rates?

A. You mean the new scale?

Q. Yes, the one proposed.

A. Well, I should say my action in that respect was inaugurated upon the filing of the Schnull suit.

Q. Isn't it a fact that you began investigating and figuring upon that matter prior to the filing of the Schnull suit?

A. I think that it is probably true that upon some complaint that came to us direct before they went to the Commission, we began to look into the matter somewhat.

361 Q. A good many people were complaining of the rates of the Vandalia Railroad, St. Louis Division, isn't that it?

A. I don't think a good many people were, but I think Mr. Griffin voiced his complaint before he went to the Commission.

Q. Others besides Mr. Griffin, were there not?

A. To be frank about it, I have no recollection of any specific complaint as to the size of the rates on the T. H. & I. Division of the Vandalia. I don't recall any, but I wouldn't say that there were none.

Q. Of course, most of those things come to me second hand from our representatives here.

Q. And at that time the country was in a state of phenomenal prosperity, was it not?

A. Yes sir.

Q. But, notwithstanding that, you foresaw that unless some uniform rate was established by the railroads of Indiana that it might produce a panic, and bring about the result which is now upon us; is that your idea?

A. That is drawing a pretty big conclusion from a pretty small fact. That is the idea.

Q. I thought that was your own conclusion?

A. That may be the idea.

Q. Didn't you say that a moment ago?

A. I don't think that I exactly justified that conclusion that the rates out of Indianapolis brought about the panic.

362 Q. What were the consequences; state it again?

A. Simply the result would be an ill-feeling between the public and the railroads, which in the long run would cause harm to the railroads, and harm to the railroads is harm to the shipper and harm to the public.

Q. The panic didn't have anything to do with that, did it?

A. You mean that feeling of antagonism? I think the panic was directly due to the fact that the owner of money and the investor in railroad securities was so afraid that the ill-will of the public was going to make it impossible for the railroads to pay him a good return for the money that he put into the railroads, that he quit letting loose of the money and he tied up the source of supply to the railroads, and so frightened everybody connected with them that they all stopped doing business. That is the real source of the panic?

Q. That is your opinion now, as to the consequences?

A. That is my analysis of the reasons for the panic. And the feeling in Indiana was just a part of the general feeling through-

out the country, and I feared at that time the consequences. They were not definitely set forth in my mind as they are now. I was no better prophet than anybody else. I didn't know what the outcome might be. I knew it was a dangerous condition.

Q. How long has the C. F. A. scale been adopted? How long has it been in existence? About 20 years, hasn't it? Since
363 1887; wasn't it about that time?

A. Yes. The going into effect of the Interstate Commerce law was the reason for the first publication of the C. F. A. scale. The first one was published in 1895 or 1896.

Q. There was a scale prior to 1887, but that was held to be in violation of law, or at least, the combination that produced it, and then the name was changed, but really the rates were continued in 1895, or 1896?

A. Well, they were not the same rates.

Q. Well, the present C. F. A. scale has been in existence since 1896?

A. Yes sir.

Q. Now, Mr. Hodgdon, you regard the Pennsylvania Railroad Company a well managed company, don't you?

A. Yes sir.

Q. And during all of the time that these rates were in existence they had been adopted by the Pennsylvania line running out—running east out of Indianapolis and south out of Indianapolis, and north out of Indianapolis, hadn't they?

A. Yes.

Q. And they charge the minimum rate, don't they?

A. Yes sir.

Q. That is seven and a half cents for the first six miles?

A. Yes sir.

Q. And they are doing that now out of Indianapolis, are
364 they not?

A. Yes sir.

Q. Now, you testified in answer to Mr. Williams' question or questions that at the time you proposed these new rates you did not know what effect it would have upon the income or revenue of the railroad company?

A. Yes sir.

Q. Is that the fact?

A. Yes, sir; not specifically; I knew it would be a reduction.

Q. Now, you are a man of considerable experience in railroad rates, are you not?

A. Yes sir.

Q. You have been studying and examining and figuring on railroad rates almost all your life, have you not?

A. Yes sir.

Q. And it is not a fact now, Mr. Hodgdon, that at the time you went over the rates, the proposed rates, that you considered the probable income of those rates, or from those rates the income to the railroad company?

A. I did, yes sir.

Q. You figured that the C. F. A. scale rates below 75 miles were unreasonable, and therefore you must have figured on them, did you not, in order to arrive at that conclusion?

A. Did I figure on what?

365 Q. You testified in answer to a question given to you by Mr. Williams that the C. F. A. scale of rates below 75 miles was unreasonably low?

A. Yes, I felt it was.

Q. And now you figured upon that, didn't you?

A. Yes sir.

Q. In order to arrive at a conclusion, you figured that the revenue to the railroad company, if they would adopt those rates would be insufficient to meet the operating expenses and pay the fixed charges, and would not return a reasonable profit for the hauling of the tonnage, didn't you?

A. I don't think at that time I got that far, in detail.

Q. How?

A. I don't think at that time I got that far into details.

Q. Well, you did not arrive at those figures in a day, did you—the proposed rates that you submitted to the Indiana Railroad Commission?

A. No.

Q. The fact of the matter is you were figuring on those rates for sometime?

A. Yes sir.

Q. Prior to the filing of the petition of Schnull and Company, you were working on this table of uniform class rates, as you called it?

366 A. I was studying the question of revision. I was not working at that time on these figures.

Q. You were studying on it and you did not come to any conclusion until after the first hearing of the Indiana Railroad Commission upon the Schnull petition?

A. I think that is correct.

Q. And you came to the conclusion that those rates were reasonable, did you not, that you proposed?

A. Well, I have stated that so frequently and given you the qualification thereon so fully that I don't know whether you want me to restate it or not. With qualifications, I thought they were reasonable; I thought it was more reasonable to make a confession than to run over it.

Q. When did you come to the conclusion that they were unreasonably low?

A. Which?

Q. The rates proposed by you?

A. After I got the analytical statement which showed the actual result.

Q. Now, isn't it a fact that you had before you at the time you arrived at your conclusion as to the scale of rates proposed by you, didn't you have before you at that time, a detailed statement of the

business of the Vandalia Railroad Company, including the
367 revenue from all sources, and the expenses for all sources, for the years 1904 and 1905?

A. No sir.

Q. That was obtainable by you, was it not?

A. No sir.

Q. It was accessible, was it not?

A. No sir.

Q. You did not arrive at that conclusion until sometime in the year 1906, did you?

A. Which conclusion?

Q. The conclusion as to the reasonableness of the proposed rates submitted by you to the Railroad Commission?

A. I don't just remember the date.

Q. For your information, I will say to you that the hearing before the Indiana Railroad Commission at which you submitted your proposed table of rates, proposed revision of the class rates, was held on October 9, 1906. At that time the annual statement of the business of the Vandalia Railroad Company had been compiled, had it not, for the years 1904 and 1905?

A. Yes sir, but if you will just allow me to make a statement, I think the annual statement did not help the matter a particle. We had to put several clerks at work for months and at a cost of several thousand dollars to make up an analytical statement showing
368 the actual results, obtained by the application of the rates. No such statement was ever made before, and so far as I know, no railroad in this territory, for instance, at the present time, has any figures of a like kind, or any statistics of the same nature from which they can draw these specific detailed conclusions. In other words, it is not anything that is in the customary accounting records.

Q. The proposed rates that you submitted to the Indiana Railroad Commission, were lower than the rates as charged by your company?

A. Yes sir.

Q. And the amount by which they were lowered could have been figured in percentage, could it not, and can now?

A. Yes sir.

Q. So that, if you know the total revenue derived from local freight as known and defined by the officers of the Vandalia Railroad Company, that is freight originating on the line destined to anywhere or to any point, if you knew the amount of the local freight and revenue from the local freight, and knew the difference in percentage in the rates as proposed by you and the rates existing on the Vandalia Railroad Company, it would not be a very hard matter, would it, to ascertain the difference in revenue derived from that sort of freight, would it?

A. It took three months of time, several clerks, and several
369 thousand dollars to get it.

Q. Who was it that made that analysis? Who had charge of it.?

A. The Auditor of the Vandalia Railroad.
Q. Mr. Roney?
A. Yes sir.
Q. And when was the analysis made?
A. During the hearing of that case.
Q. Before the final hearing, or afterwards?
A. It was before the final hearing.
Mr. WILLIAMS: No, you are mistaken about that. It was not made until after this suit here was instituted, and was not obtained until July, 1907.
The WITNESS: I will tell you why I thought that. I was getting mixed up on the hearing of this case, and the hearing of the class rate case before the Commission. That was when it was brought forward, in the class rate case.
Q. Now, you say that the business of the T. H. & I. was analyzed, and from the analysis of that business, and ascertaining as to what the tonnage would have yielded, as compared with the operating expenses of that division, the T. H. & I.; and the revenue derived from the transportation of freight on the rates as proposed by
370 you; you reached the conclusion that those rates would not have produced sufficient funds to pay the operating expenses and to pay the fixed charges and the interest on the stock?
A. I told you that I would get papers to clear up that statement.
Q. I am asking you if that was the conclusion from the examination of the business of the T. H. & I.?
A. No, I don't care to stand on that statement until I get the papers.
Q. To bear you out?
A. To bear me out. In other words, I reserve the privilege of presenting that statement in its proper light, based on the actual figures and facts, as they exist. I cannot carry them in mind.
Q. You don't want the Master and the court to consider the testimony you have given previously in this case and in this hearing upon that subject, but you prefer to go over it again?
A. That one single answer, upon which you asked me to present the facts from the figures, I would prefer to do that.
Q. Now, after your memory has been refreshed by Mr. Williams, do you now recall when that analysis was made?
A. I did not make it, sir; the analysis was made by the Auditor and under the instructions of Mr. Williams. If you wish to, you can get that information from him.
371 Q. And that was with reference to the business of the T. H. & I. Railroad Company, prior to the consolidation with the Vandalia?
A. Both prior and afterwards; it was as to the business involved in the case. That was all that was involved in the case.
Q. Now, the Pennsylvania Railroad Company, which controls the Vincennes Division of the Vandalia Railroad Company, or which had controlled it prior to the consolidation, had the C. F. A. scale of rates in force on that division?
A. Yes sir.

Q. That was the minimum scale?
A. Yes.
Q. The same as they had on the divisions east and south and north?
A. Yes.
Q. The Pennsylvania Railroad Company, to your knowledge, made no attempt, whatever to change the C. F. A. scale on its divisions east and south and north of Indianapolis, did they?
A. No sir.
Q. They made no endeavor to change that scale of rates on the Vincennes Division prior to the consolidation with the Vandalia Railroad Company to your knowledge, did they?
A. I don't know that they did.

372 Recross-examination.

Questions by Mr. WILLIAMS:

Q. Now, the Vincennes Division prior to the consolidation was always operated at a loss, wasn't it, Mr. Hodgdon?
A. The Vincennes Division was always operated at a loss prior to the consolidation, yes sir; it had to have most of its securities wiped out when it was turned over to the Vandalia.
Q. Did you ever know what the reduction would have been in the revenue under the rates proposed by you, had they been applied to the traffic that had been actually carried until I furnished you the figures?
A. No sir, I never knew it.
Q. And that was after the order had been made in the Schnull case, don't you remember, it was during the time when the Commission was investigating as to the hearing on the general class rates?
A. I remember that now, and I had those two cases mixed up.
Q. They instituted, subsequently to this Schnull case being brought, a general inquiry as to all class rates, didn't they?
A. Yes sir.
Q. And that was after the act of 1907 was passed, which gave them authority to make a general inquiry?

373 A. Yes sir.
Q. Now, Mr. Hodgdon, here is a paper that I found in your files that will enable you to answer a part of the question I asked you. Take 1904, what reduction did the Commission rates make in the traffic, or would they make in the traffic that had been actually carried that year, subject to those rates, the class rates?
A. Taking the year 1904, and applying the Commission's rates as ordered, to business that moved——
Q. Affected by those rates?
A. Affected by those rates, the revenue would have been reduced, $27,581.68.
Q. And how much would that revenue have been reduced had the rates you suggested been applied for that year to the traffic that actually moved?

A. The reduction would have been, under my proposed scale, $19,490.04.

Q. Taking the year 1905, what would the revenue on these class rates have been had the Commission rates been applied to the traffic actually moving that year?

A. The reduction under the commmissioners' rates would be $30,988.43.

Q. And what would have been the reduction had the rates suggested by you been applied to that traffic that year?

A. The reduction under my proposed rates would be $21,891.65.

374 Q. Now, please give me the same information for the year 1906?

A. 1906, the reduction under Commission rates, $35,304.16; reduction under my rates, $24,695.82.

Q. You have already stated, I believe, that no such information as would have enabled you to obtain these results was available at the time you made your proposition of rates?

A. I so stated that, yes sir.

Q. And the only way it was obtained, Mr. Hodgdon, was by having a force in the Auditor's office go over the way-bills for each of these years, and get the tonnage moved and the rates applied to it?

A. That was the only way it would be obtained.

By Mr. KORBLY:

Q. Mr. Hodgdon, have you before you the total income or revenue of the Vandalia Railroad Company, St. Louis Division, between Indianapolis and the Illinois state line, for the year 1904, for freight carried under the class rates?

A. As affected by this case, yes sir.

Q. That is to say, you have before you for the years 1904, 1905, and 1906, for each of those years separately, the amount of revenue derived from the tonnage shipped under the class rates, from

375 Indianapolis to the state line and all intermediate points?

A. Yes sir.

Q. Including the terminals?

A. Yes sir.

Q. What is the total revenue for the year 1904 for that sort of freight?

A. $79,803.80.

Q. That includes freight coming east and going west shipped under the class rates for the year 1904, does it not? originating and terminating on the line?

A. Between Indianapolis and the State line, yes sir.

Q. What was the revenue for 1905, upon that same class of freight?

A. $91,067.56.

Q. And for the year 1906, what was the revenue?

A. $102,241.15.

Q. Now, that has reference, exclusively, does it not, to all freight

coming under the official classification, originating on the line of road between here and the Illinois state line?

A. I don't know just exactly what you mean by that; the official classification applied?

Q. Does that show the revenue for the commodity rates?

376 A. No sir, it shows just what you asked—class rates.

Q. Does it show the revenue derived from the fifth class rate?

A. Yes sir.

Q. And the sixth class rate?

A. Yes sir.

Q. It does not show the revenue derived from the commodity rates?

A. No sir.

Q. From freight originating on the Vandalia Line between Indianapolis and the Illinois state line?

A. No sir.

Q. There is such freight as that originating on the line I have specified?

A. Yes sir.

Q. You don't know; do you Mr. Hodgdon, what it costs to transport the freight which produced the revenue of $79,803.80, and the revenue that you have given for the years 1905 and 1906, do you?

A. No, I do not.

Q. The work that was necessary to do in order to determine what reduction would be made for the year 1904, if the Indiana Railroad Commission's rates had been enforced, and if your rates proposed by you had been in force, was the compiling from the way-bills, the tonnage and the revenue derived therefrom on all freight originating between Indianapolis and the Illinois State line,

377 and at the terminals, that is Indianapolis to the Illinois state line, that was the work that you had reference to that took so long to get, wasn't it?

A. Taking it from the way-bills, yes sir.

Q. Now, how did you arrive at that figure, the tonnage and the revenue derived therefrom on all class freight originating on your line of road and terminating on your line of road between the Illinois state line and Indianapolis and including the terminals; how do you arrive at the figures $27,581.68, as being the reduction in the revenue in the year 1904, if the Railroad Commission's rates had been in force, instead of the regular rates of the Vandalia Railroad Company?

A. Applying the Commission's rates to each shipment and taking the difference.

Q. That was done by the clerks at the time they compiled the tonnage?

A. Yes sir.

Q. That is the actual reduction, there was no estimate about it?

A. That was the actual reduction.

Q. That is true with reference to the other years?

A. Yes sir, I think I am right in that statement, am I not?

By Mr. WILLIAMS:

Q. You made none of the figure yourself?

378 A. No sir; the general basis of getting the figures is, as I understand it, from the Auditor.

By Mr. KORBLY:

Q. What rates did you consider when you figured on the Commission basis; the first schedule of rates fixed by them or the schedule of rates adopted by them after the rehearing?

A. I didn't consider it at all.

Q. Well, upon what basis was it figured, if you know?

A. My understanding is that it was upon the final order of the Commission.

Q. That is your understanding; you don't know, do you?

A. No, I do not.

Q. There were two orders made by the Railroad Commission in this matter of Schnull and Company against the Vandalia Railroad Company for a reduction of rates about which we have been speaking?

A. Yes sir.

Q. After the first order a petition for a rehearing was granted and after a further hearing the Railroad Commission finally made an order adopting the rates for the Vandalia. Now, you don't know whether it was the first schedule of rates adopted by them, or the second?

A. Well, as I didn't make it, I don't know, but I understand it was the second.

379 By Mr. WILLIAMS:

Q. The first order never was enforced, was it?

A. No sir.

By Mr. KORBLY:

Q. Well, for that matter the second order never was in force, was it, Mr. Hodgdon? In other words, the Railroad Company didn't comply with the order, did it?

A. No sir.

By Mr. WILLIAMS:

Q. But it became effective at a certain date, and the other never did, that is the difference between the two?

A. And in the first, there never was a completed order; the second order was a completed order from the Commission, as I understand.

By Mr. KORBLY:

Q. Did you have any figures before you, Mr. Hodgdon, at the time you prepared the proposed table of rates in reference to the revenue derived from freight on the Vandalia System, St. Louis Division?

A. Like these you mean? No, no figures like these.

Q. No figures like you have before you now, but you had
380 some figures before you, didn't you?

A. I don't just exactly know what you mean.

Q. You did not prepare this table of rates blindly, did you? You didn't guess at it, did you?

A. I made it up out of my best judgment.

Q. I know, but your judgment was controlled somewhat by the revenue derived from freight, wasn't it, and the expense of handling it, wasn't it?

A. I think it was controlled by being afraid that the consequences of antagonism to the railroads would be greater perhaps than the loss of revenue, if the rates were reduced. I think that was the way my judgment was largely controlled.

Q. Well, now, in answer to the question propounded by Mr. Williams you stated it is your opinion that these rates proposed by you are too low. How do you arrive at that conclusion, Mr. Hodgdon?

A. I arrive at it very largely from the results of the analysi- which show the reduction in practically the average profit above operating expenses; and from the developments since that time which have shown in a general way that the earnings and expenses of the railroad company are coming so near together that there is not any margin of profit.

Q. Well, now, you say that the revenue that would have been derived from the transportation of freight under your rates would have been less than operating expenses?

381 Mr. WILLIAMS: Oh, he never said that.

Q. You say the average profit above operating expenses. Now, what are the operating expenses, if you know, Mr. Hodgdon?

A. As shown in the annual report; I couldn't give them from memory.

Q. The operating expenses for what?

A. For the T. H. & I. Railroad, you mean?

Q. Yes.

A. I might ask you what; I don't know what you mean. But the operating expenses of the railroad yearly are shown in the annual report.

Q. Well, now, the operating expenses are not shown in the annual reports of the T. H. & I. Railroad Company prior to the consolidation of the Vandalia Railroad Company as to the transportation of this particular kind of freight?

A. Not separate.

Q. No. The operating expenses as shown in the annual report of the T. H. & I. Railroad Company, prior to the consolidation showed the expenses for the transportation of local freight and foreign freight, the term local as understood by the officers of the Vandalia Railroad Company, at the time they compiled the annual statement meant all freight originating on the line of road between Indianapolis and the state line, destined to any point; in other words, it included domestic freight, and foreign or interstate traffic, didn't it?

382 A. I did not make the report.

Q. I say, you know that to be a fact, don't you?

A. I wouldn't like to say that that is the exact fact——

Q. (Interrupting.) You talked about operating expenses a few minutes ago. You evidently had in mind what you meant by operating expenses?

A. I don't think the operating expenses were divided as between local and through freight on any such basis as you stated there. I think they take the business of the railroad and show how much money they got and how much money they paid out.

Q. Well, now, the revenue on the T. H. & I. prior to the consolidation was derived from the transportation of passengers, the transportation of freight, the transportation of mail and express, and they had certain other sources of income, perhaps, rentals, and perhaps they held some stock in some other companies that would produce some revenue; at any rate, that is the great source of revenue with railroad companies, transportation of freight, passengers, mail and express. Do you remember how they divided their freight business, in filing their annual reports?

A. No.

Q. Don't you know as a matter of fact that they did distinguished between local freight and through freight?

A. No, I don't know that; not in making up the operating
383 expenses.

Q. They made that distinction in reference to the income derived from the freight?

A. Possibly.

Q. And also in reference to the expense of operating?

A. I really have no recollection of the form in which the annual report of the T. H. & I. was made up at that time.

Q. You have in mind now something about operating expenses because you testified that the revenue derived from business done by the Vandalia in the years 1904, 1905 and 1906, if the Commission rates had been in vogue, or if your rates had been in vogue, would not have produced sufficient revenue to pay operating expenses. Now, tell us what you understand, or what you have in mind when you testify about operating expenses?

A. Thank you, Mr. Korbly; I am glad to answer that question. I merely had this in mind; that the average operating expenses were 70 to 75 per cent; therefore, the average profit was 25 to 30 per cent., and the reduction represented by the figures stated, in the terms of per centages came very near being the measure of the profit, 25 to 30 per cent.

Q. In other words, for every dollar that was earned by the T. H. & I. Railroad Company for the year 1904 and '05, prior to the consolidation, and for every dollar that was earned by the T. H. & I., or by that division of the Vandalia Railroad Company known as the T. H. & I. after the consolidation, for the year 1906, it
384 cost you 70 or 75 cents to earn a dollar?

A. Yes, that is it.

Q. Now, then, because the Railroad Commission of Indiana,

adopted a set of rates, which if put in force, and assuming that the tonnage would have been as great under their set of rates as it was under the regular set of rates, just because a 25 or 30 per cent. reduction in the revenue from freight alone, class freight, would have incurred or followed the introduction of the Railroad Commission rates, therefore, you conclude that there would have been a 25 or 30 per cent. reduction all around, and that the revenue would not have been sufficient to pay the operating expenses?

A. I did not make any such statement.

Q. You said a minute ago that it took 70 or 75 cents to earn a dollar?

A. Yes sir.

Q. That was shown by the report for what year?

A. No, I said that just generally.

Q. And that because now there was a 25 per cent. reduction in the rates of the Railroad Commission over the rates as fixed by the Railroad Company, that because that percentage was just about equal to the amount of money made by the Railroad Company on a dollar, that, therefore, the profit was eaten up; that was your statement, wasn't it?

A. You will have to qualify that before I can endorse it.

385 Q. Make whatever qualification you see fit.

A. On the business involved.

Q. Well, now, how do you know that it took 70 or 75 cents, prior to the adoption of the Railroad Commission rate to earn $79,303.80?

A. I do not.

Q. You don't know it?

A. No.

Q. And that is true also of the years 1905 and 1906?

A. Yes sir; all that I said——

Q. (Interrupting.) You don't mean to say——

A. (Interrupting.) I mean to say that what I said in my answer as to the general basis.

Q. You don't mean to have the Master get the impression that it took 70 or 75 cents on a dollar to earn the $79,303.80?

A. I didn't say that.

Q. And you don't mean to infer that or have him infer that from your testimony?

A. No sir, only so far as it is fair to infer that that stands with the general business.

Q. And you don't mean to infer that it took 70 or 75 cents on every dollar of income to earn the total revenue derived in the year 1905 from the tonnage originating and ending on the Vandalia Line between Indianapolis and the Illinois state line, including both terminals?

A. Only so far as it is fair to assume that that business

386 goes with the general average.

Q. That is true, also, with reference to 1906?

A. Yes sir.

Q. That 70 to 75 cents which was required to be expended for

the years 1904 and 1905, in order to earn a dollar had reference to all of its system? In the years 1904 and 1905, it had reference to the T. H. & I.?

Mr. WILLIAMS: No, Mr. Korbly, it didn't in 1905. 1904 was not under the consolidation, and 1905 and 1906, were under the consolidation. The consolidation took effect January 1st, 1905.

Q. Now, what I was driving at was, the 70 to 75 cents expense to earn every dollar in the year 1904, on the T. H. & I. Railroad, now the Vandalia, between Indianapolis and the Illinois state line, had reference to all the freight handled by the Vandalia in that year, whether through or loca-?

A. Yes sir, the general results.

Q. And for the years 1905 and 1906, it had reference to all freight both through and local?

A. My recollection is, that in 1905 there was a set of figure- made which compared the T. H. & I. Railroad earnings with previous years. I don't know whether that is so or not.

387 Q. Well, at any rate, you had reference to the entire freight handled and the revenue?

A. The net result of the bookkeeping for the entire year.

Q. Now, if the entire revenue of the T. H. & I. for the year 1904, and if the entire revenue for the years 1905 and 1906, on that portion of the St. Louis Division of the Vandalia Railroad Company between Indianapolis and the Illinois state line, had been based upon the class rate, the revenue would have been considerably higher than you figured it, or as shown by your annual reports, would it not?

A. You mean if all the revenue had moved on class rates, it would have been much higher?

Q. Yes.

A. Yes sir.

Q. And therefore, the operating expenses as compared to the revenue would have been considerably lower, wouldn't it?

A. Of course, if you have twice as much revenue for a ton, and it don't cost you any more, the margin would have been much greater.

Q. What were the rates that you submitted to the Indiana Railroad Commission and the shippers, which you proposed should be adopted?

A. —

Rates in Cents per Hundred Pounds—Official Classification.

388

	Classes.					
	1	2	3	4	5	6
From Indianapolis to Ben Davis.	10	9	8	6	4	3
From Indianapolis to Bridgeport	10.5	9.5	8.5	6.5	4.5	3
From Indianapolis to Oak Plain, Plainfield and Gibson.....	11	10	9	7	5	3.5
From Indianapolis to Cartersburg and Clayton.....	11.5	10.5	9.5	7.5	5	4
From Indianapolis to Pecksburg, Amo, Coatesville.....	12.5	11.5	10.5	8.	6	5
From Indianapolis to Fillmore, Alameda, Greencastle, Limedale	14	12.5	11.5	8.5	7	6
From Indianapolis to Hamrick, Reelsville, Eagles, Harmony, Knightsville, Brazil	16	14.5	13.5	10	7.5	6.5
From Indianapolis to Turner, to Terre Haute, including Macksville	18	16	15	10.5	8	7
From Indianapolis to Liggett and Nelson	19.5	18.5	17	11	8.5	7.5

The basis for making these rates was generally this:

389 For five miles:

	Classes.					
	1	2	3	4	5	6
Transportation	6	5	4	3	2	1.5
And add for terminal charges..	4	4	4	3	2	1.5

For each five miles add one-half cent per hundred pounds on each class. Modify the rates so that the fifth and sixth class rates will in no case be higher than the minimum C. F. A. scale. There are one or two other modifications in other classes to fit the conditions, but they are very unimportant. I think that answers the question fully as to what rates were submitted and how they were arrived at.

Stipulation.

Mr. WILLIAMS: It is stipulated that the rates named in the bill of complaint from Indianapolis to the stations between Bridgeport and Gibson are the same as to Gibson, and that the rates from Indianapolis to the stations between Gibson and Clayton are the same as to Clayton; and that the rates from Indianapolis to the stations between Clayton and Coatesville are the same as the rates to Coatesville; and that the rates from Indianapolis to the stations between

Coatesville and Limedale are the same as to Limedale; and
390 that the rates to the station between Limedale and Brazil are the same as to Brazil; and that the rates to the stations between Brazil and Nelson are the same as to Nelson.

Mr. KORBLY: Now, Mr. Williams I have a copy of the Central Freight Association scale of rates, and if conceded to be correct, I would like to introduce that.

Mr. WILLIAMS: It is right is it, Mr. Keavy? Did you check it over?

Mr. WILLIAMS: All right, I don't care to check it over.

Mr. KORBLY: Well, if it is not correct, all errors in it will be corrected.

The Copy of the Central Freight Association scale of rates was admitted in evidence, marked by the Reporter Exhibit No. 4, and the same is in the words and figures following, to-wit:

391 Ex. 4.

Central Freight Association.

Scale of Minimum Class Rates.

Information Circular 2495.

Rates in Cents per 100 Pounds.

Miles.	Classes.					
	1	2	3	4	5	6
5	7½	7½	7	6	4	3
10	7½	7½	7	6	4½	3
15	7½	7½	7½	7	5	3½
20	7½	7½	7½	7	5	4
25	7½	7½	7½	7	5½	4½
30	7½	7½	7½	7	6	5
35	8½	8½	8	7½	6½	5½
40	9½	9½	9	8	7	6
45	10½	10½	10	8	7½	6
50	12	11½	10½	8½	7½	6½
55	13	12½	11½	9	7½	6½
60	14½	13	12	10	7½	6½
65	15½	14	13	10	7½	7
70	17	15	13½	10	8	7
75	18	16	15	10½	8	7
80	19½	18½	17	11	8½	7½
85	21	19	17	11½	8½	7½
90	22	20	17	12	9	8
95	23	22	18	12	9	8
100	24	22	19	12½	9	8
110	24½	22	19½	12½	9	8
120	25	22	19½	12½	9½	8

130	26	23	19½	13	10	8½
140	27½	24	20	13	10	8½
150	28½	25	20	13½	10½	8½
160	30	26	21	13½	11	9
170	31	26½	21½	14	11	9
180	31½	27	21½	14	11½	9
190	32	28	22	14½	11½	9½
200	33	28½	22	15	12	9½
210	34	29½	22½	15	12½	10
220	35	30	22½	15	13	10
230	35½	30½	23	15½	13	10½
240	36	31	23	16	13	10½
250	37	32	23½	16	13½	10½
275	38½	33	24½	16½	14	11
300	40	34	25	17	14½	11½
325	41	35	26	18	15	12
350	42	36	27	18½	15½	13
375	43	36½	27½	19	16½	13½
400	44	37½	28½	19½	17	14
425	44½	38½	29	20½	17½	14½
450	45	39	30	21	18	15

392 Mr. KORBLY: Now, Mr. Williams, we want to introduce some tables that are not yet finished, showing the stations and the mileage and the rates on the roads out of Indianapolis, but we haven't got that table compiled or completed?

Mr. WILLIAMS: On the Vandalia, you mean?

Mr. KORBLY: No, on other roads. We had a statement similar to that on the hearing before the Railroad Commission, and this statement will be like that. I suppose you consent without convening again that a copy of that statement will be handed to you, or that a copy will be handed to the Stenographer that it may be handed to you in your copy of the evidence.

Mr. WILLIAMS: That is all right. If in checking it over, I find it is wrong, I will call for its correction.

Mr. KORBLY: Certainly, we will be glad to make the correction.

393 WILLIAM HODGES, recalled as a witness by the Defendants, testified as follows:

By Mr. KORBLY:

Q. Mr. Hodgdon, what percentage of rates does the Vandalia receive on shipments from New York to Terre Haute, on third class freight?

A. I am not sure that I can recall the exact percentage.

Q. What is your answer, Mr. Hodgdon?

A. I can't recall, so as to be sure to be right in making that statement. I could furnish it without any trouble though by referring to the records—without much trouble.

Q. The percentage would be about the same on all classes, wouldn't it, Mr. Hodgdon?

A. From the same point to the same point, it would be about the same.

Q. From New York to Terre Haute, it would be about the same wouldn't it, the same percentage?

A. Yes.

Mr. KORBLY: Mr. Williams, there is one thing I would like to have you get for me, a statement showing what percentage on class-
1, 2, 3, 4, 5, and 6, of the revenue goes to the Vandalia Rail-
394 road Company, and what percentage goes to the foreign rail-
road, connecting road, say, from New York to Terre Haute. That could be gotten, couldn't it, Mr. Williams?

Mr. WILLIAMS: Oh, yes, I could give you the percentage, from New York to Terre Haute, undoubtedly.

Mr. KORBLY: Do you know that, now?

Mr. WILLIAMS: Oh, no, I don't know that.

Mr. KORBLY: Well, if you will get me that, I will be obliged.

Mr. WILLIAMS: On all the connections?

Mr. KORBLY: No, just on the Pennsylvania.

Mr. WILLIAMS: That would be a terrific job to give you the percentage, with all the connections, but on the Pennsylvania, on New York to Terre Haute, I could get that for you without any trouble.

Mr. GRIFFIN: Can you get us the percentage the Vandalia would receive on a shipment from New York by the Erie, C. H. & D.
and Vandalia to Terre Haute, and also on the Pennsylvania
395 on a shipment from New York to Terre Haute by Pennsyl-
vania and Vandalia?

Mr. WILLIAMS: Yes.

Mr. KORBLY: I think with that, that is all we care to introduce.

The MASTER: Now, Mr. Williams wishes to see the testimony as it is written out before he determines whether he has anything in the way of rebuttal to offer, and I suppose we will have to adjourn without fixing any time for getting together again.

Mr. WILLIAMS: As soon as I get the testimony, I will let you know within a day or two what my conclusion is and if I have nothing further to offer, we can make further arrangements about briefing and argument.

Whereupon the hearing was adjourned subject to the call of the Master.

396 MONDAY, *October* 12, 1909.

The hearing was resumed before the Master, present the same as at the last session.

Mr. WILLIAMS: The defendants state that the class rates from Chicago, Illinois to Greencastle, Indiana, by way of the Chicago and Eastern Illinois and the Vandalia are as follows:

First class	31.5 cents.
Second class	27. cents.
Third class	21.5 cents.
Fourth class	14. cents.
Fifth class	11.5 cents.
Sixth class	9. cents.

The defendants state that under the division of the rates the Chicago and Eastern Illinois gets seventy (70) per cent and the Vandalia thirty (30) per cent of the class rates above enumerated with a maximum of three (3) cents per hundred pounds, and that the thirty per cent that goes to the Vandalia Railroad Company between Terre Haute and Greencastle are as follows:

First class	9.45 cents.
Second class	8.1 cents.
Third class	6.45 cents.
Fourth class	4.2 cents.
Fifth class	3.45 cents.
Sixth class	3. cents.

and that the distance from Terre Haute to Greencastle is thirty five (35) miles; and that the distance from Indianapolis to Greencastle is thirty eight (38) miles.

397 Defendants further state that *that* the class rates from New York to Terre Haute by way of the Pennsylvania and Vandalia line are as follows:

First class	75 cents.
Second class	65 cents.
Third class	50 cents.
Fourth class	35 cents.
Fifth class	30 cents.
Sixth class	25 cents.

and that these rates are also the rates from New York to Terre Haute by way of the Erie, C. H. & D. and Vandalia Railroad Companies.

Defendants submit the following statements furnished by the complainant (Exhibits 5, 6, 7):

398 EXHIBIT 5.

The number of empty and loaded cars handled in and out of Indianapolis on freight trains during the year 1905, were as follows:

Loaded cars	107,942;
Empty cars	38,056;
Total	145,998.

On all classified freight New York to Terre Haute coming from the Pennsylvania or via the Erie and Cincinnati, Hamilton & Dayton, the Vandalia Railroad Company receives for the haul from Indianapolis to Terre Haute fifteen per cent. of the through rate after deducting a terminal charge at New York or five cents per hundred pounds when the property comes via the Pennsylvania, and three cents per hundred pounds when it comes via the Erie and Cincinnati, Hamilton & Dayton.

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	Vandalia R. R. 1905.		Increase or decrease.	T. H. & P. R. R. 1905.		Increase or decrease.	Total, 1905.		Increase or decrease.
Miles of road operated	658.31		.....	165.75		.....	824.06		.....
Freight earnings	$4,675,741.62	I	$353,310.68	$499,992.33	D	$4,434.92	$5,175.95	I	$348,875.76
Per cent. of total earnings	64.98%	I	8.07%	77.00%	I	1.36%	65.97%	I	7.55%
Number of tons carried	7,174,257	I	598,860	743,488	I	38,468	7,917,745	I	637,328
Number of tons carried one mile	631,595,944	I	72,237,541	78,649,717	I	11,153,908	710,245,661	I	83,391,449
Ave. miles each ton was carried	88.04	I	17.01	105.78	I	10.04	89.70	I	3.60
Number of tons per mile of road	10,901		86	4,282	I	222	9,610	I	742
Number of tons carried one mile per mile of road	959,668	I	105,933	452,973	I	64,239	862,064	I	98,483
Freight earnings per mile of road	$7,104.48	I	$507.26	$2,879.64	D	$25.54	$6,282.07	I	$402.40
Freight expenses per mile of road	$6,290.93	D	$121.69	$2,510.20	I	$180.26	$5,025.32	D	$92.58
Net earnings from freight per mile of road	$813.55	I	$628.95	$369.44	D	$205.80	$1,256 75	I	$494.98
Average gross earnings per ton (cents)	65.2	D	0.5	67.2	D	4.3	65.4	D	0.9
Average earnings per ton per mile (cents)	.74	D	.03	.64	D	.11	.73	D	.04
Average cost per ton per mile (cents)	.59	D	.09	.55	D	.05	.58	D	.09
Average number of tons in loaded car	17.77	I	.96	19.33	I	.96	17.93	I	.97
Average train load (tons)	263.92	I	19.98	245.79	I	14.46	261.78	I	19.27
Average number of loaded cars in train	14.85	I	.34	12.71	I	.12	14.60	I	.30
Average number of empty cars in train	7.12	D	.27	5.42	I	.36	6.92	D	.20
Revenue freight train mileage	2,393,105	I	100,066	319,984	I	28,213	2,713,089	I	128,279
Revenue freight train mileage per mile of road	3,636	I	137	1,843	I	163	3,293	I	266
Freight earnings per revenue freight train mile (cents)	195.4	I	6.9	156.3	D	16.6	190.8	I	4.1
Freight expenses per revenue freight train mile (cents)	154.8	D	10.8	136.2	D	2.5	152.6	D	10.0

400 Ex. No. 7.

Mileage and Local Class Freight Rates from Indianapolis on Pennsylvania Railroad (Louisville Division) Compared with Mileage and Present Local Class Freight Rates on Complainant Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Penn. Point; Second Line, Complainant.

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Southport, Ind	7	6	6	6	6	4½	3
Ben Davis, Ind	6.1	10	9	8	7	5	4
Greenwood, Ind	11	6	6	6	6	5	3½
Bridgeport, Ind	8.8	12	11	10	8	6	5
Whitehead, Ind	15	7½	7½	7½	7	5	3½
Plainfield, Ind	13.6	15	13	11	9	6½	5½
Franklin, Ind	20	7½	7½	7½	7	5	4
Cartersburg, Ind	16.9	18	15	12	10	7	6
Amity, Ind	25	7½	7½	7½	7	5½	4½
Amo, Ind	24.9	20	18	14½	11	8	7
Edinburg, Ind	31	8½	8½	8	7½	6½	5½
Coatesville, Ind	28	20	18	14½	11	8	7
Taylorsville, Ind	35	8½	8½	8	7½	6½	5½
Fillmore, Ind	32.6	22	20	17	12	9	8
Columbus, Ind	41	10½	10½	10	8	7½	6
Greencastle, Ind	38.9	22	20	17	12	9	8
Walesboro, Ind	46	12	11½	10½	8½	7½	6½
Hamrick, Ind	43.8	24½	22	19½	12½	9	8
Jonesville, Ind	52	13	12½	11½	9	7½	6½
Eagles, Ind	50.4	24½	22	19½	12½	9	8
Rockford, Ind	57	14½	13	12	10	7½	6½
Knightsville, Ind	54.8	24½	22	19½	12½	9	8
Seymour, Ind	59	14½	13	12	10	7½	6½
Turner, Ind	59	25	22	19½	12½	9½	8
Chestnut Ridge, Ind	64	15½	14	13	10	7½	7
Seelyville, Ind	65.2	25	22	19½	12½	9½	8
Crothersville, Ind	71	18	16	15	10½	8	7
Terre Haute, Ind	72.7	25	22	19½	12½	9½	8
Austin, Ind	75	18	16	15	10½	8	7
Macksville, Ind	75.1	25	22	19½	12½	9½	8
Scottsburg, Ind	79	19½	18½	17	11	8½	9½
Nelson, Ind	79.1	25	22	19½	12½	9½	8

400a *Mileage and Local Class Freight Rates from Indianapolis on Complainant's Road (Vincennes Division) Compared with Mileage and Present Local Class Freight Rates on Complainant's Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Vincennes Division Point; Second Line, Complainant's Point.*

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
West Newton, Ind.....	11	7½	7½	7½	7	5	3½
Bridgeport, Ind.....	8.8	12	11	10	8	6	5
Mooresville, Ind.....	16	7½	7½	7½	7	5	4
Cartersburg, Ind.....	16.9	18	15	12	10	7	6
Brooklyn, Ind.....	20	7½	7½	7½	7	5½	4½
Clayton, Ind.....	20.1	18	15	12	10	7	6
Campbells, Ind.....	25	7½	7½	7½	7	5½	4½
Amo, Ind.....	24.9	20	18	14½	11	8	7
Martinsville, Ind.....	30	7½	7½	7½	7	6	5
Coatesville, Ind.....	28	20	18	14½	11	8	7
Hynds, Ind.....	33	8½	8½	8	7½	6½	5½
Fillmore, Ind.....	32.6	22	20	17	12	9	8
Whittakers, Ind.....	40	9½	9½	9	8	7	6
Limedale, Ind.....	40.3	22	20	17	12	9	8
Hamrick, Ind.....	43.8	24½	22	19½	12½	9	8
Gosport, Ind.....	44	10½	10½	10	8	7½	6
Roma, Ind.....	49	12	11½	10½	8½	7½	6½
Reelsville, Ind.....	47.3	24½	22	19½	12½	9	8
Spencer, Ind.....	53	13	12½	11½	9	7½	6½
Harmony, Ind.....	53	24½	22	19½	12½	9	8
Freedom, Ind.....	62	15½	14	13	10	7½	7
Staunton, Ind.....	60.9	25	22	19½	12½	9½	8
Farmers, Ind.....	65	15½	14	13	10	7½	7
Seelyville, Ind.....	65.2	25	22	19½	12½	9½	8
Worthington, Ind.....	71	18	16	15	10½	8	7
Terre Haute, Ind.....	72.7	25	22	19½	12½	9½	8
Switz City, Ind.....	79	19½	18½	17	11	8½	7½
Nelson, Ind.....	79.1	25	22	19½	12½	9½	8

400*b* *Mileage and Local Class Freight Rates from Indianapolis on C., H. & D. (Cincinnati Division) Compared with Mileage and Present Local Class Freight Rates on Complainant's Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is C., H. & D. (Cincinnati Division) Point; Second Line, Complainant Point.*

From Indianapolis to—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Irvington, Ind.....	5	7½	7½	7	6	4	3
Ben Davis, Ind.....	6.1	10	9	8	7	5	4
New Palestine, Ind.....	15	7½	7½	7	7	5	3½
Plainfield, Ind.....	13.6	15	13	11	9	6½	5½
Reedsville, Ind.....	18	7½	7½	7½	7	5	4
Cartersburg, Ind.....	16.9	18	15	12	10	7	6
Morristown, Ind.....	25	7½	7½	7½	7	6	5
Amo, Ind.....	24.9	20	18	14½	11	8	7
Arlington, Ind.....	32	8½	8½	8	7½	6½	5½
Fillmore, Ind.....	32.6	22	20	17	12	9	8
Rushville, Ind.....	40	9½	9½	9	8	7	6
Greencastle, Ind.....	38.9	22	20	17	12	9	8
Griffins, Ind.....	45	12	11½	10½	8½	7½	6½
Hamrick, Ind.....	43.8	24½	22	19½	12½	9	8
Greenwood, Ind.....	48	12	11½	10½	8½	7½	6½
Eagles, Ind.....	50	24½	22	19½	12½	9	8
Connersville, Ind.....	57	14½	13	12	10½	7½	6½
Knightsville, Ind.....	54.8	24½	22	19½	12½	9	8
Brownville, Ind.....	65	15½	14	13	10	7½	7
Seelyville, Ind.....	65.2	25	22	19½	12½	9½	8
Liberty, Ind.....	71	18	16	15	10½	8	7
Terre Haute, Ind.....	72.7	25	22	19½	12½	9½	8

400c *Mileage and Local Class Freight Rates from Indianapolis East on Pennsylvania Railroad (Pittsburg Division) Compared with Mileage and Present Local Class Freight Rates on Complainant Road (St. Louis Division) from Indianapolis to Illinois State Line. The Station Named in the First Line of Each Group is Complainant Point; Second Line, Penn. Point.*

From Indianapolis—	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
To Ben Davis, Ind.....	6.1	10	9	8	7	5	4
" Irvington, Ind.....	5	7½	7½	7	6	4	3
" Plainfield, Ind.....	13.6	15	13	11	9	6½	5½
" Cumberlain, Ind....	15	7½	7½	7½	7	5	3½
" Cartersburg, Ind....	16.9	18	15	12	10	7	6
" Philadelphia, Ind....	17	7½	7½	7½	7	5	4
" Amo, Ind.....	24.9	20	18	14½	11	8	7
" Greenfield, Ind.....	21	7½	7½	7½	7	5½	4½
" Coatesville, Ind.....	28	20	18	14½	11	8	7
" Charlottesville, Ind...	29	7½	7½	7½	7	6	5
" Fillmore, Ind.....	32.6	22	20	17	12	9	8
" Knightstown, Ind...	34	8½	8½	8	7½	6½	5½
" Greencastle, Ind....	38.9	22	20	17	12	9	8
" Dunreith, Ind.....	39	9½	9½	9	8	7	6
" Hamrick, Ind.....	43.8	24½	22	19½	12½	9	8
" Lewisville, Ind.....	44	10½	10½	10	8	7½	6
" Eagles, Ind.....	50	24½	22	19½	12½	9	8
" Strawis, Ind.....	47	12	11½	10½	8½	7½	6½
" Turner, Ind.....	59	25	22	19½	12½	9½	8
" Germantown, Ind...	55	13	12½	11½	9	7½	6½
" Terre Haute, Ind....	72.7	25	22	19½	12½	9½	8
" Richmond, Ind.....	68	17	15	13½	10	8	7

400d *Mileage and Local Class Rates on Complainant's Road (St. Louis Division) from Indianapolis Compared with Class Rates Ordered by the State Railroad Commission.*

From Indianapolis to—	Miles.	Classes. 1st.	2nd.	3rd.	4th.	5th.	6th.	
Ben Davis	6.1	10	9	8	7	5	4	Present Rates.
		8	7	6½	5	3½	2½	Comm's Order.
Bridgeport	9	12	11	10	8	6	5	Present Rates.
		8½	7½	7	5	4	3	Comm's Order.
Oak Plain	11	15	13	11	9	6½	5½	Present Rates.
		8½	7½	7	5	4	3	Comm's Order.
Plainfield	14	15	13	11	9	6½	5½	Present Rates.
		9	8	7	5½	4	3	Comm's Order.
Gibson	15	15	13	11	9	6½	5½	Present Rates.
		9	8	7	5½	4	3	Comm's Order.
Cartersburg	17	18	15	12	10	7	6	Present Rates.
		9½	8½	7½	5½	4½	3	Comm's Order.
Clayton	20	18	15	12	10	7	6	Present Rates.
		9½	8½	7½	5½	4½	3	Comm's Order.
Pecksburg	23	20	18	14½	11	8	7	Present Rates.
		10½	9½	8½	6½	4½	3½	Comm's Order.
Amo	25	20	18	14½	11	8	7	Present Rates.
		10½	9½	8½	6½	4½	3½	Comm's Order.
Coatesville	28	20	18	14½	11	8	7	Present Rates.
		11	10	9	6½	5	3½	Comm's Order.
Fillmore	33	22	20	17	12	9	8	Present Rates.
		11½	10½	9	7	5	4	Comm's Order.
Almeda	36	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.
Greencastle	39	22	20	17	12	9	8	Present Rates.

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Greencastle.....	39	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.
Limedale.....	40	22	20	17	12	9	8	Present Rates.
		12	11	9½	7	5½	4	Comm's Order.
Hamrick.....	44	24½	22	19½	12½	9	8	Present Rates.
		13	12	10½	8	6	4½	Comm's Order.
Reelsville.....	47	24½	22	19½	12½	9	8	Present Rates.
		13½	12	11	8	6	4½	Comm's Order.
400*e*								
Eagles.....	50	24½	22	19½	12½	9	8	Present Rates.
		13½	12	11	8	6	4½	Comm's Order.
Harmony.....	54	24½	22	19½	12½	9	8	Present Rates.
		14	12½	11	8½	6½	4½	Comm's Order.
Knightsville.....	55	24½	22	19½	12½	9	8	Present Rates.
		14	12½	11	8½	6½	4½	Comm's Order.
Brazil.....	57	24½	22	19½	12½	9	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Turner.....	59	25	22	19½	12½	9½	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Staunton.....	61	25	22	19½	12½	9½	8	Present Rates.
		14½	13	11½	8½	6½	5	Comm's Order.
Cloverland.....	63	25	22	19½	12½	9½	8	Present Rates.
		15½	14	12½	9½	7	5	Comm's Order.
Seelyville.....	65	25	22	19½	12½	9½	8	Present Rates.
		15½	14	12½	9½	7	5	Comm's Order.
Prairie.....	71	25	22	19½	12½	9½	8	Present Rates.
		16	14½	13	9½	7	5½	Comm's Order.
Terre Haute.....	73	25	22	19½	12½	9½	8	Present Rates.
		16½	15	13	10	7½	5½	Comm's Order.

VERTICAL IN BOOK

400*f* The following is a table of comparison of class rates showing complainant's percentage in cents per hundred pounds of Chicago class rates to Greencastle, Indiana, via C. & E. I. R. R.; also the class rates ordered by Commission of Indiana and complainant's present class rates in cents per hundred pounds from Indianapolis west 33 miles, and complainant's present class rates in cents per hundred pounds to Ben Davis:

	Cents per hundred pounds.
First Class:	
Complainant's percentage of Chicago rate to Greencastle, Ind. via C. & E. I. R. R.	.0945
Commission's rate from Ind'p'l's west 33 miles	.115
Complainant's rate " " " 33 "	.22
Complainant's " " " to Ben Davis (6.1 miles)	.10
Second Class:	
Complainant's per cent of Chicago rate to Greencastle, Ind., via C. & E. I. R. R.	.081
Commission's rate from Indianapolis west 33 miles	.105
Complainant's " " " " 33 "	.20
Complainant's " " " to Ben Davis (6.1 miles)	.09
Third Class:	
Complainant's per cent of Chicago rate to Greencastle, Ind., via C. & E. I. R. R.	.0645
Commission's rate from Ind'p'l's west 33 miles	.09
Complainant's " " " " 33 "	.17
Complainant's " " " to Ben Davis (6.1 miles)	.08
Fourth Class:	
Complainant's per cent of Chicago rate to Greencastle, Ind., via C. & E. I. R. R.	.042
Commission's rate from Ind'p'l's west 33 miles	.07
Complainant's " " " " 33 "	.12
Complainant's " " " to Ben Davis (6.1 miles)	.07
Fifth Class:	
Complainant's per cent of Chicago rate to Greencastle, Ind., via C. & E. I. R. R.	.0345
Commission's rate from Ind'p'l's west 33 miles	.05
Complainant's " " " " 33 "	.09
Complainant's " " " to Ben Davis (6.1 miles)	.05
Sixth Class:	
Complainant's per cent of Chicago rate to Greencastle, Ind., via C. & E. I. R. R.	.03
Commission's rate from Ind'p'l's west 33 miles	.04
Complainant's " " " " 33 "	.08
Complainant's " " " to Ben Davis (6.1 miles)	.04

400*g* The following is a table of comparison of class rates showing complainant's percentage in cents per hundred pounds of the New York class rates to Terre Haute via Pennsylvania Railroad Company and complainant's St. Louis Division; also complainant's present class rates and the class rates ordered by the Railroad Commission of Indiana in cents per hundred pounds from Indianapolis to Terre Haute, Indiana:

	Cents per hundred pounds.
First Class:	
Complainant's percentage New York rate to Terre Haute..	.105
Commission's rate from Ind'p'l's to Terre Haute.....	.165
Complainant's present rate from Ind'p'l's to Terre Haute..	.25
Second Class:	
Complainant's percentage New York rate to Terre Haute..	.09
Commission's rate from Ind'p'l's to Terre Haute.....	.15
Complainant's present rate from Ind'p'l's to Terre Haute..	.22
Third Class:	
Complainant's percentage New York rate to Terre Haute..	.0675
Commission's rate from Ind'p'l's to Terre Haute.....	.13
Complainant's present rate from Ind'p'l's to Terre Haute..	.195
Fourth Class:	
Complainant's percentage New York rate to Terre Haute..	.045
Commission's rate from Ind'p'l's to Terre Haute.....	.10
Complainant's present rate from Ind'p'l's to Terre Haute..	.125
Fifth Class:	
Complainant's percentage New York rate to Terre Haute..	.0375
Commission's rate from Ind'p'l's to Terre Haute.....	.075
Complainant's present rate from Ind'p'l's to Terre Haute..	.095
Sixth Class:	
Complainant's percentage New York rate to Terre Haute..	.03
Commission's rate from Ind'p'l's to Terre Haute.....	.055
Complainant's present rate from Ind'p'l's to Terre Haute..	.08

401 UNITED STATES OF AMERICA,
District of Indiana, ss:

I, Noble C. Butler, Clerk of the Circuit Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in said court in the cause of the Vandalia Railroad Company vs. Union B. Hunt et al., as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said Court, at Indianapolis in said District, this 24th day of June, A. D. 1910.

[Seal of Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: File No. 22,242. Indiana C. C. U. S. Term No. 335. William J. Wood, John F. McClure, Frank E. Payne et al., Appellants, vs. Vandalia Railroad Company. Filed June 27th, 1910. File No. 22,242.

Office Supreme Court, U. S.
FILED.
DEC 16 1911
JAMES H. McKENNEY,
CLERK.

— IN THE —

Supreme Court of the United States

OCTOBER TERM, 1911.

APPEAL FROM CIRCUIT COURT OF INDIANA.

No. 3[illegible]. 11

WILLIAM J. WOOD ET AL.,
Appellants,
v.
VANDALIA RAILROAD CO.,
Appellee.

MOTION BY APPELLANTS TO ADVANCE CAUSE ON DOCKET.

THOMAS M. HONAN,
BERNARD KORBLY,
WILLARD NEW,
Attorneys for Appellants.

Central City Publishing Co., Printers, Indianapolis.

— IN THE —

Supreme Court of the United States

OCTOBER TERM, 1911.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

WILLIAM J. WOOD,
JOHN F. MCCLURE,
FRANK E. PAYNE, ET AL.,
Appellants,
v.
VANDALIA RAILROAD CO.,
Appellee.
} Term No. 335.

MOTION BY APPELLANTS TO ADVANCE THE CAUSE ON DOCKET.

Come now the appellants before named and move the Court to advance the above entitled cause on the Docket, that the same may be brought on earlier than in its regular order and be set down for hearing as soon as possible after the hearing of *Shepard v. Northern Pacific Railway Company, et al.*, (known as the Minnesota rate case) and other rate cases now pending in this Court and to be considered with said case.

As grounds for this motion the appellants respectfully show the Court:

This is a suit brought in August, 1905, before the Railroad Commission of Indiana, praying the Commission to order a reduction in the class rates that had been theretofore charged by the Vandalia Railroad Company for the transportation of freight within the State of Indiana. After several hearings in this case an order was issued by said Indiana Railroad Commission on December 14, 1906, prescribing reduced rates to be charged by said Vandalia Railroad Company. Before the date set for the rates prescribed by the Indiana Railroad Commission to be put in effect, to wit: February 1, 1907, appellee applied to the Circuit Court of the United States for the District of Indiana for an injunction to prevent the said rates being enforced on the ground that said rates were confiscatory and in violation of Section 1, Article 14, of the Constitution of the United States. A temporary injunction was granted, which was made permanent by said Court's final judgment rendered June 29, 1909, and from said judgment the appellants appealed to this Court.

We pray this cause be advanced for final hearing and determination by this Court for the following reasons:

1. The burden imposed by the present rates, enforced and collected by appellee, have been in effect about twenty-four years, continuously last past, and have long ceased to be just and fair to shippers in general, as well as to the appellants herein, as shown by the record in this case.

2. The financial interests involved in this case are very large and seriously concern not only the parties to this action but all the shippers doing business in said state, as well as all the people of said state and the public generally.

3. So long as the judgment appealed from in this case is in effect, there can be no substantial reduction in rates made by the Railroad Commission of Indiana no matter how high and unjust said rates may be, if the method for determining the question of confiscation that was adopted in this case is to be applied to other reductions.

4. The principles of law involved are also of the utmost importance not only to the parties to this action and the people of the state of Indiana, but to the railroads and the people of the entire country, so far as they involve the right of state railroad commissions, where justice demands it, to reduce rates found to be excessively high.

We believe, therefore, that the issues in this case are of such great public concern as to call for an early final decision.

Respectfully submitted,

THOMAS M. HONAN,
BERNARD KORBLY,
WILLARD NEW,
Solicitors for Appellants.

UNITED STATES OF AMERICA,
STATE OF INDIANA,
COUNTY OF MARION, } ss:

I, William J. Wood, being duly sworn, on my oath depose and say that I am one of the defendants and respondents to this action and am Chairman of the Railroad Commission of Indiana mentioned in the aforegoing motion; that I have read the same, and that the matters and things therein set forth are true.

WILLIAM J. WOOD.

Subscribed in my presence and sworn to before me by the said William J. Wood this 12th day of December, 1911.

MABEL STINE,
NOTARY PUBLIC.

My commission expires September 26, 1914.

NOTICE.

WILLIAM J. WOOD,
JOHN F. MCCLURE,
FRANK E. PAYNE, ET AL.,
Appellants,
v.
VANDALIA RAILROAD CO.,
Appellee.
} Term No. 335.

To the Vandalia Railroad Company:

You are hereby notified that the appellants in the above entitled cause will, on December 18th, 1911, present a motion to the Supreme Court of the United States, requesting said Court to advance on its docket for hearing and final determination the above entitled cause at an earlier date than the same would be heard and determined in its regular way, for the reasons set out in said motion, which motion is attached to and made a part of this notice.

THOMAS M. HONAN,
BERNARD KORBLY,
WILLARD NEW,
Attorneys for Appellants.

The Vandalia Railroad Company, through John G. Williams, its general counsel, hereby acknowledges service of the above and foregoing notice, this 13th day of December, 1911.

JNO. G. WILLIAMS.

7

Office Supreme Court, U. S.
FILED.
DEC. 22 1911
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. [redacted] 11

WILLIAM J. WOOD ET AL., APPELLANTS,

vs.

VANDALIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

OPPOSITION TO APPELLANTS' MOTION TO ADVANCE CAUSE FOR HEARING.

FREDERIC D. McKENNEY,
Attorney for Vandalia R. R. Co.

JOHN G. WILLIAMS,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 335.

WILLIAM J. WOOD ET AL., APPELLANTS,

vs.

VANDALIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

OPPOSITION TO APPELLANTS' MOTION TO ADVANCE CAUSE FOR HEARING.

Appellants move to advance this cause so that it "may be brought on earlier than in its regular order and be set down for hearing as soon as possible *after* the hearing of *Shepard vs. Northern Pacific Railway Company* (known as the Minnesota Rate Case) and other rate cases now pending in this court."

As grounds for this motion appellants recite that the cause, which was instituted before the Railroad Commission of Indiana in August, 1905, prayed a reduction in the class rates theretofore

charged for twenty-four years by the Vandalia Railroad Company for the transportation of certain classes of freight within the State of Indiana.

After hearing, said Railroad Commission ordered the reduction of such rates and thereupon the Vandalia Railroad Company applied to the Circuit Court of the United States for the District of Indiana for an injunction to prevent said order being enforced, alleging that same was confiscatory and in violation of section 1, article XIV of the Constitution of the United States.

The Railroad Commission of Indiana was permanently enjoined from putting said reduced rates into effect by final judgment of said Circuit Court, rendered June 29, 1909, and to review that judgment the pending appeal was taken.

No suggestion is made in the motion itself nor in any of the grounds urged in support of it, tending to disclose any true relation between the points of law which may be supposed to be involved in the "Minnesota Rate" and correlated cases, and those involved in the present case. It will be observed that appellants do not ask that the present case be advanced to be heard *with* the "Rate Cases" heretofore advanced, but only that in order that the present case "may be brought on earlier than in its regular order," the court is asked to advance and set it down for hearing "as soon as possible *after*" said advanced cases shall have been heard.

The judgment of the District Court herein appealed from was rendered June 29, 1907, and the transcript of the record in the case was not docketed in this court until June 27, 1910, practically one year thereafter.

The transcript of record has not yet been printed, and it seems not unlikely that, in view of the rapid progress now being made by the court in the regular call of the docket, this case, being No. 335 on the docket for the current term, will be called in its regular order for hearing before the adjournment of the court for the term. At any rate, the case has been on the docket of this court for practically eighteen months, and this is the first effort that has been made to have it advanced for hearing out of its regular order, although the bases for such a motion, if any now exist, have existed throughout such period of time.

It is stated in appellants' motion that the rates covered by the proceedings have been in force for more than twenty-four (24) years, and it appears from an examination of the report of the Master in Chancery, appointed by the Circuit Court of the United States for the District of Indiana to take testimony and report findings to the latter court, that said master found and reported, in substance, that if the order of the Indiana Railroad Commission should be enforced the Railroad Company would be compelled to transport the commodities covered by such rates at prices which would reduce its earnings below operating ex-

penses, and would, consequently, have the effect of depriving said Company of its property without due process of law.

Upon the whole, it would seem that no good reason for the requested advancement of this case has been submitted, and particularly that no such relation has been shown to exist between the present case and the other "Rate Cases" referred to in appellants' motion as should induce the assignment of the case for hearing immediately *after* such other cases.

We respectfully submit the motion to advance should be denied.

FREDERIC D. McKENNEY,
Attorney for Vandalia R. R. Co.

JOHN G. WILLIAMS,
Of Counsel.

No. [redacted]

Office Supreme Court, U. S.
FILED.
OCT 29 1912
JAMES H. McKENNEY,
CLERK.

— IN THE —

Supreme Court of the United States

October Term 1912.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

[redacted]

WILLIAM J. WOOD, JOHN F. McCLURE, FRANK E. PAYNE, CONSTITUTING THE RAILROAD COMMISSION OF INDIANA, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN AND GEORGE G. GRIFFIN,

Appellants,

v.

VANDALIA RAILROAD COMPANY,

Appellee.

SUPPLEMENTAL BRIEF ON BEHALF OF THE APPELLANTS, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN AND GEORGE G. GRIFFIN.

CHARLES W. SMITH,
HENRY H. HORNBROOK,
ALBERT P. SMITH,
Attorneys for Appellants, Gustav A. Schnull, William J. Griffin and George G. Griffin.

Central City Publishing Co., Printers, Indianapolis.

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— IN THE —

Supreme Court of the United States

October Term 1911.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

WILLIAM J. WOOD, JOHN F. MCCLURE, FRANK E. PAYNE, Constituting the Railroad Commission of Indiana, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN AND GEORGE G. GRIFFIN,
Appellants,
v.
VANDALIA RAILROAD COMPANY,
Appellee.

No. 335.

SUPPLEMENTAL BRIEF ON BEHALF OF THE APPELLANTS, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN AND GEORGE G. GRIFFIN.

I.

The appellants, Gustav A. Schnull, William J. Griffin and George G. Griffin, desire to file a supplemental brief on their own account arguing certain of the questions discussed in the original and general brief heretofore filed,

from a slightly different point of view than that in which they are presented in the brief heretofore filed.

They adopt the general statement of the record and the character of the case and of the issues set forth in the general and original brief heretofore filed.

II.

Their contentions are:

1ST. THAT THE FINDING OF THE MASTER, WHICH WAS ADOPTED BY THE COURT BELOW, VIZ:—

"That the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses" is not supported by the evidence in the cause.

2ND. THAT THE GENERAL CONCLUSION OF LAW STATED BY THE MASTER UPON FACTS FOUND BY HIM, WHICH CONCLUSION IS ADOPTED BY THE COURT BELOW, IS NOT WELL FOUNDED IN THE LAW.

These are the two propositions which these appellants desire to debate.

III.

As a preface to the direct discussion of these questions, they desire very briefly to state the general principles of law established by the adjudications of this Court which must control the discussion.

First: As to the question of fact involved. In the first instance every presumption of fact stands for the validity of the order of the Railroad Commission. One who asserts the invalidity of the order must establish the alleged invalidity with certainty and precision by competent testimony.

"In approaching the consideration of a case of this kind we start with the presumption that the act of the legislature is valid, and upon any company seeking to challenge its validity rests the burden of proving that it infringes the constitutional guarantee of protection to property. The case must be a clear one in behalf of the Railroad Company, or the legislation of the state must be upheld."

Chicago Milwaukee, etc., Ry. v. Tompkins, 176 U. S. on p. 173;

See also—

Dow v. Beidelman, 125 U. S. 680;

Minneapolis, etc., Ry. Co. v. Minnesota, 186 U. S. on p. 264.

This proposition is so fundamental and so well sustained, that there could be no justification in counsel elaborating it, or citing authorities in support of it.

Second: That while it is true in the ordinary case in equity if a master has found a fact, and the court has overruled an exception to the particular finding of fact, the appellate court will not enter upon the consideration of the evidence contained in the record touching the existence or non-existence of such fact. But even in such ordinary case in equity, if it is plainly made to appear that such finding of fact is based upon some fundamental error in the process by which the master was led to his conclusion as to the fact, whether as to matter of law or logic of fact, the appellate court may with propriety review the finding of fact stated by the master in his report, although the trial court may have overruled an exception to the particular finding of fact, approved the report and based its decree upon the fact so found.

But in cases of the character of the one now at bar, this court many times, in practice at least, has given but little weight to the ordinary rule in equity cases, and has for

itself, with great care, labor and patience gone into the consideraion of the evidence adduced before the master, and has for itself weighed such testimony, and determined whether it justified the findings of the master which have been approved by the court.

Minneapolis, etc., Ry. v. Minnesota, 186 U. S. *supra;*

City of Knoxville v. Knoxville, etc., 212 U. S. 1;

Wilcox v. Consolidated Gas Co., Id. p. 19;

Chicago, Milwaukee, etc., R. R. Co., v. Tompkins, 176 U. S. 167.

Third: This court in *Chicago, etc., Ry. Co. v. Tompkins,* 176 U. S. *supra,* says at (pp. 173,) immediately following the quotation already made:

"Such being unquestionably the law, it is obviously of the utmost importance that the facts shall be clearly and accurately found and distinctly stated by the trial court, and that those facts shall sustain the conclusion reached."

In that case the master reported the evidence without making any findings of fact or stating any conclusions of law. The trial court taking such evidence, in its opinion, made reference to or stated certain facts, and certain findings, of which this court said:

"We are of the opinion that neither the findings made by the court, nor such facts as are stated in its opinion, are sufficient to warrant a conclusion upon the question whether the rates prescribed by the defendants were unreasonable or not, and we are also of the opinion that the process by which the court came to its conclusion is not one which can be relied upon."

The court reversed the cause by this mandate:

"For these reasons we not merely reverse the decree of the trial court, but also remand the case to that court with instructions to refer the same to some competent master to report *fully the facts*, and to proceed upon such report as equity shall require."

ARGUMENT.

First. As to the *finding of fact* already quoted *"that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced would reduce the earnings of the complaintant below its operating expenses."*

Of necessity to arrive at this conclusion there must have been a finding of two facts.

1st. The cost of operation in the handling and transportation of the classified freights covered by the order.

2nd. The earnings of the road arising out of the handling and transportation of such classified freights within the State of Indiana.

After the finding of these two facts, all that remains is a mathematical calculation, showing the difference the one way or the other, showing the loss or profit of the transaction, as the case may be.

Now these appellants are quite willing to concede, that practically it may be quite impossible to arrive at the exact cost of the carriage of the local freights to and from points between the City of Indianapolis and the western boundary line of the State, including both terminals, to the cent, to the dollar, to the hundred dollars, or to the thousand dollars. But in order to a judgment or decree of a court, state or Federal, and the rule is of course the same in each jurisdiction, declaring the order of a State Railway Commission invalid as being confiscatory, there must be evidence upon which the court may with a sense of certainty proceed to the finding of the fact, that the cost of handling exceeds the revenues derived therefrom, although neither the master nor the court, can ascertain the precise amount of such excess, and in arriving at such finding of

such fact on the evidence, certainly nothing less than this can justify such a decree.

And these appellants understand that this is what this court meant in its mandate, above referred to in the case of *Chicago, etc., Ry. Co. v. Tompkins, supra*, and also in the body of the opinion, requiring the master "to find *fully* the facts."

(Of course our language here is addressed to the language of the general finding and not as implying, that at least as a general rule Railroad Companies are not entitled to some excess of earnings over cost of operation, as compensation for capital invested, if such compensation has not been taken into account as one of the items of expenses.)

In the Master's finding while there is at the close the general finding already quoted that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses, there is no finding of fact what such operating expenses would be.

It is true that the master does state that—"In the present case the complainant has adopted, as the only practicable method of ascertaining the expenses incident to the transportation of classified freight between points upon its road within the state, an apportionment of them upon the ratio of all operating expenses, to the whole earnings from every source, upon the road between Indianapolis, and the Illinois State line, during the year 1904, and upon the St. Louis Division which extends from Indianapolis to St. Louis during the years 1905 and 1906, the percentage of expenses being as follows:

1904 .....72.64
1905 .....73.03
1906 .....72.64"

He also finds from the evidence taken before him, "the gross earnings upon the transportation of classified freight during those years between the points within the State" to be

1904 .....$79,803.80
1905 ..... 91,067.56
1906 .....102,241.15

These figures being based upon the "rates fixed by the complainant during a period immediately preceding the proposed reduction of them by the order of the Railroad Commission which became operative February 1st, 1907."

This is a proper and formal finding of fact upon the evidence and we do not question its correctness.

There is no finding of fact what the operating expenses actually were for those years, but assuming that the percentage of expenses to the gross earnings from every source, upon the road, within the boundaries named, might be properly applied to the gross earnings from classified freight for the respecitve years, the Master by a mere mathematical process arrives at the conclusion, that the cost of the transportation of the classified freight affected by the order of the Commission for the respective years was as follows:

For 1904 .....$59,453.83
1905 ..... 66,506.64
1906 ..... 74,267.97

But making this assumption, by a mathematical process, he reduces the supposed earnings from classified freight below the cost of its transportation, arrived at by applying the percentage of expenses to gross earnings of the *entire business* of the Railroad Company, that is, from domestic freight (by this expression is intended the freights originating and ending between Indianapolis and the western

boundry line of the state, and covered by the order of the Railroad Commission) from all other freights, from passenger service, express, transportation of mail.

Here these appellants state two propositions:

First: This process of applying this formula of applying the ratio of all expenses of every character and description to earnings of every character and description and working out by this purely mathematical process a result which it is alleged, shows that the application of the rates established by the Railroad Commission, results in reducing the earnings below the cost of operation, however deduced, is erroneous, has no sound base upon which to stand and leads to deceptive results.

This will be made apparent by a very simple statement.

The class rates established by the Railroad Commission in force prior to the making of the order of the Railroad Commission between Indianapolis and Nelson (Nelson being six miles west of Terre Haute. See list of stations and number of miles in Railroad Commission Table of Classified Rates (Record p. 10), were as follows: (Record p. 209.)

Class	1	2	3	4	5	6
Rate	25	22	19.5	12.5	9.5	8

Now, these appellants think it is legitimate to assume, that these rates fixed by the company itself were compensatory. On the Master's assumption, they had resulted in an excess of earnings over cost of transportation of about 27%.

The class rates from New York to Terre Haute are as follows:

Class	1	2	3	4	5	6
Rate	75	65	50	35	30	25

(Record p. 202.)

Now let us suppose the class rates between Indianapolis and Nelson were placed five times as high as they were placed by theRailroad Company, the result would be:

Class	1	2	3	4	5	6
Rate	$1.25	$1.10	$ .97½	$ .62½	$ .47½	$ .40

This would make the rates from Indianapolis to Terre Haute 60% or more higher than from New York to Terre Haute .

Now, applying the formula to this supposed rate between Indianapolis and Terre Haute that the Master applied to the rate established by the Railroad Company, and we have as a result the *cost of transportation exceeding* the earnings produced by this supposed rate.

The formula or process of the master and approved by the court was this: By the application of the rates established by the Railroad Commission, the earnings theretofore realized from the rates established by the Railroad Company, were reduced 34% or 34.5%; that the percentage of the cost of transportation to entire earnings was 73.03% or 72.64%; now adding to these per cents the 34% or 34.5% reduction, and we have the cost of transportation—107.03% or 107.14% of the earnings, or a loss of about or over 7%. (Record p. 16.)

Now, let us apply the same process, to the earnings that would have been realized, had the rates been fixed at five times the rates, as suggested, that were fixed by the Railroad Company.

Take for instance the statement for the year 1905—

Total earnings of the St. Louis Division for the year 1905. (Record p. 69)		$4,750,811.13
Operating expenses for same year. (Record p. 69.)	$3,469,544.81	
Ratio of expenses to earnings. (Record p. 69.)	73.03	
Earnings from classified freight for the year 1905 (Record p. 78.)		91,067.56
Now deducting this amount from total earnings, will give the earnings from all other sources		$4,659,743.57
Now if the suggested rate of five times the rate established by the Railroad Company be applied, the earnings would have been 5 x $91,067.56		455,337.80
On this theory total earnings of the company would have been		5,115,081.37
The tonnage and mileage remain the same, and consequently the cost of transportation would have remained the same		3,469,544.81
Dividing expenses by earnings and we have the percentage of expense to earnings		67.8%
Now add the 34% reduction for 1905		34.
		101.8%

Thus on this basis, showing a loss of 1.8%.

Or applying the formula concretely to the actual dollars and cents involved we have it thus, on the hypothesis, that the class rates had been increased five fold

The gross earnings upon the transportation of the classified freight between the points in the state, would have been	455,337.80
Cost of transportation at 67.8%	308,719.03
The gross earnings upon such classified freight had they by the operation of the order of the Railroad Commission been reduced 34%	300,522.95
Leaving a deficit for that year of	$8,196.08

And a similar result would be reached by applying the formula to each of the years 1904 and 1906.

And we must bear in mind what is apparent from the very nature of things, if the revenue or income is increased, without increase of cost of transportation, the ratio of expense to income will be correspondingly decreased. See Hodgdon's testimony (Record p. 197).

And we must further bear in mind, that where, as here, the entire freight business affected by the order of the Railroad Commission is less than one per cent of the gross freight business of the Vandalia Railroad Company, a prescribed rate therefor, which would result in a large profit, would make but a very small difference in the ratio of gross expenses to gross earnings of the entire business.

If it was desired to ascertain what the ratio of expenses to the earnings would have been if the rates prescribed by the Railroad Commission had been in effect, the exact effect of the reduction upon the ratio could have been ascertained for all of the years, as the reduction could have been ascertained for each of the years 1904, 1905 and 1906, as compared with what such ratio would have been if the Railroad Company's rates had been in effect (if we should accept as correct the ratio of expenses to earnings accepted by the master).

For the year 1905 the result would have been as follows:

Total earnings of the St. Louis Division. (Record p. 69.)		$4,750,811.13
Earnings from classified freight at appellee's rates. (Record p. 78.)	91,067.56	
Earnings if Railroad Commission rates had been in effect. (Record p. 78.)	60,079.13	
Reduction of earnings by application of Railroad Commission's rates		30,988.43

Total earnings if Railroad Commission's rates on classified freight had been in effect	$4,719,822.70
Operating expenses. (Record p. 69.)	3,469,544.81
Ratio of expenses to earnings if the Railroad Commission's rates had been in effect	73.51%

Thus we see that the reduction of rates prescribed by the Railroad Commission increased the ratio of expense to earnings only 48-100 of one per cent.

These appellants do not contend that by this argument they have accomplished more than a demonstration, that "the process by which the court came to its conclusion is not one which can be relied upon."

Suppose that the hearing had resulted in an order by the Railroad Commission prescribing an *advance* in rates of 34%. It certainly could not be contended that an advance of 34% in rates, and consequently in the revenue resulting from those rates, would not show a decrease of 34% in the ratio of expenses to earnings on traffic affected by this supposed order of the Commission, *if the finding of the master is correct*, that the reduction of 34% in rates, consequently in revenue, causes an increase of 34% in the ratio of expenses to earnings of traffic affected.

If this principle is once admitted, no sounder argument could be used to secure an advance in rates on first one division of a road, then on another, from year to year, than to merge the increases in revenues resulting from advances in any particular rates that might be secured annually, and that did not affect a large volume of traffic, in the average ratio of expenses to earnings on all business, causing such a small decrease in the average ratio of expenses to earnings that the railroad would be enabled, after its annual statement was published, following the increase in its rates on any particular traffic, to demand an increase

on other traffic and even on the same traffic on which rates had been increased.

The principle as applied by the Master in effect makes an established rate a vested right, because if after advancing the rates 34%, the Commission should determine that the rates established by the advance were too high, and should conclude that only half of the increase should have been granted, the railroad could, if so disposed, invoke the rule alleged to have been established in the Smythe-Ames case, and prevent the proposed reduction by the Commission of the rates the Commission itself had established.

The following statement will show what the ratio of expenses to earnings would have been had the increase of 34% in the classified rates been prescribed by the Commission:

1905

Total revenue	$4,750,811.13
Revenue from classified freight..	$91,067.56
Increase due to 34% advance in rates	30,962.97
Total would then be	$4,781,774.10
Expense	$3,469,544.81
Ratio of expenses to earnings would then be..	72.55

Now, should the Commission conclude that only half of the said advance should have been granted, and would, by a subsequent order, reduce the then established rates 17%, the Railroad could assert that the

Ratio of expenses to earnings were	72.55
Cost of local over through (as per Smythe-Ames case)	10.
Per cent of reduction ordered by Commission	17.
This would make per cent of expenses to earnings	99.55

and the Railroad could claim that this would not yield sufficient profit to pay interest on its securities and a reasonable dividend to its stockholders.

If the rule, claimed by the Master to have been established by the decision in the Smythe-Ames case, is approved by this court, it will practically limit the right of a Railroad Commission to correct rates by making advances only, as this alleged rule would confiscate its right to make a reduction except in the improbable circumstance of a railroad reducing its ratio of expenses on average business an abnormal amount in one year.

This is but a negation. Now they propose to proceed to an affirmative argument leading to the same result.

Second: The evidence in this cause does not justify the finding of the Master that the ratio of the expense of carrying the classified freight, to the earnings derived from such services, were the respective per cents which he applied to the classified freights involved in this case, resulting in the figures which he set down "as the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission between points in the state." (See Record p. 16.)

The Master refers to the cases of *Smythe v. Ames*, 189 U. S. 466 and *Railway Company v. Tompkins*, 176 U. S. 167, as justifying his course in applying such ratios in this case.

The first observation to be made here is that in all rate cases, the facts are complicated, and require patient, careful and protracted study and consideration. Each will have its own pecularities and perplexities. This court has never undertaken to set down any rule applicable to all the cases. On the contrary, it has more than once declared, that each case stands on its own footing. And the de-

termination in each case as to the reasonableness or unreasonableness of a rate established by the authority of the state, is a determination of a fact, and not of law. And the language of the decisions is to be restrained and controlled by the facts and circumstances appearing in them respectively.

Covington, etc., Turnpike Co. v. Sandford, 168 U. S. 578;

Wisconsin Minnesota etc., R. R. Co. v. Jacobson, 179 U. S. p. 287;

Smythe v. Ames, 169 U. S. on p. 546.

The Smythe-Ames case was again before this court in 171 U. S. 361, on motion of appellants to modify the decree, such motion being sustained. This court then by its ruling on such motion clearly signified that the decision was based upon the *precise state of facts disclosed* by the record in that case.

Thus it becomes necessary to carefully consider the decisions in those cases, and see how far, if at all, they justify the action of the Master in this cause.

1st. *Smyth v. Ames*, 169 U. S. p. 466.

It is true that in that case this court did apply the ratio of total expenses to total earnings of "*the entire business done in the state*" (see heading of the table Exhibit No. 20 on page 532, and the express declaration of the opinion on page 534), in arriving at the expense of carrying the classified freight carried in Nebraska. That might well have been a proper process of proceeding in that case, and yet wholly improper in this case. These appellants for all the purposes of this argument do not in the least criticise the process adopted in that cause. But they believe that they can show to this court, reasons why the rule applied in that case, cannot be fairly applied in this case.

1st. Take Exhibit No. 20 just referred to, which was the basis of the court's conclusion in that cause, and compare the situation there presented, with the situation existing in this cause, with respect to the tonnage and mileage of infra state and interstate freight.

We will take for the year 1892 of that table and compare it with the case of the Vandalia Railroad Company for the year 1905, adding two columns, viz: The average number of miles one ton of each class of local freight was carried, and the average number of miles each ton of interstate freight was carried. The result is:

TABLE A.

Name of Road 1892	1 No. of tons carried locally	2 No. of tons of local freight carried 1 mile	3 Average No. of miles 1 ton local freight was carried	4 No. of tons of interstate freight	5 No. tons interstate freight carried 1 mile	6 Average No. of miles 1 ton interstate freight carried
Burlington	574653	91139965	158	1996437	316552193	158
St. Paul Co.	65762	11028287	167	264403	44321384	167
Fremont Co.	158350	24069200	152	846312	128425903	152
Union Pac. Co. ...	192865	42970322	222	1882112	419300773	222
Omaha Co.	63999	4659127	72	628351	45745647	72
St. Jos. Co.	39657	2005851	50	303550	15355015	50
Kansas City Co. ..	10823	481515	44	194089	7635016	44

Column three is produced by dividing the amount set down in column 2 by the amount set down in column 1 and column 6 is produced by dividing the amount set down in column 5 by that set down in column 4.

It is thus seen that Exhibit No. 20 was based upon the theory that the average haul per mile of infra state and inter-state freight was precisely the same. Now turn to the situation presented in the case at bar, taking for example and by way of illustration, the business for the calendar year 1905, (this year is taken because of the fact, that the evidence for this calendar year is more complete than for either of the other years; and for this reason the year 1905 upon the Vandalia is used throughout this argument.)

The appellee's witness, John H. Buchanan, testifies (Record p. 83) that during the calendar year 1905 the total weight of all classified freight, originating and terminating on the Vandalia line between Indianapolis and the Illinois State line, was as follows:

1st class, 6395326 pounds; 2nd class, 4743012 pounds; 3rd class, 10688749 pounds; 4th class, 5868931 pounds; 5th class, 41074459 pounds; 6th class, 9005850 pounds. The same witness testifies, (Record p. 87), that the revenue received for the transportation of such freight stated by classes as follows:

From 1st class, $16,377.61; 2nd class, $9,342.88; 3rd class, $16,816.99; 4th class, $6,383.41; 5th class, $35,331.61; 6th class, $6,815.06.

The court will also discover from Exhibit No. 6, p. 203 of the record, that the number of tons of freight carried on the Vandalia Railroad was 7174257.

The court will also discover, from the table of rates established by the appellee prior to the time when the com-

mission made its order, and in force at that time, (see Record, p. 9), that the rates in each class, applied to groups of stations, the same rate in each class applying to each of the stations in the group. There are but eight stations named in the schedule of rates established by the company as against which there is a rate in cents per hundred pounds. While in the schedule of rates fixed by the Railroad Commission (Record, p. 10), there are set down twenty-nine stations with the distance from Indianapolis, and the rates for each class of freight to that station, in which again the same rate in each class is fixed for a number of different stations in proximity to each other. So that when there has been discovered the average revenue per ton in each class of freight which has been produced by the application of the schedule of rates, the average miles of the haul is fixed, at least very closely. For example, in the 4th class the rate of ten cents per hundred pounds at Clayton, is fixed 20 miles from Indianapolis, at 11 cents per hundred pounds at Coatsville, distance of 28 miles, and 12 cents per hundred pounds to Limedale, a distance of 40 miles. So that when the court has the average revenue per 100 pounds realized on the 4th class freight, it is known how many miles that revenue would carry the hundred weight of freight.

The result is shown by the following table:

TABLE A[1]

Class Rates in effect during the year 1905.
From Indianapolis.
Rates in cents per 100 pounds.

To Stations and Groups named.	Miles.	Classes. 1	2	3	4	5	6
Ben Davis	6	10	9	8	7	5	4
Bridgeport	9	12	11	10	8	6	5
Oakplain	11	15	13	11	9	6½	5½
Plainfield	14						
Gibson	15						
Cartersburg	17	18	15	12	10	7	6
Clayton	20						
Pecksburg	23	20	18	14½	11**	8	7
Amo	25						
Coatsville	28**						
	32*‡§			15.75°		8.5‡	7.5§
Fillmore	33	22	20†	17	12	9	8
Almeda	36						
Greencastle	39						
Limedale	40†						
Hamrick	44	24½	22	19½	12½	9	8
Reelsville	47						
Eagles	50						
Harmony	54						
Knightsville	55						
Brazil	57						
Turner	59	25	22	19½	12½	9½	8
Staunton	61						
Cloverdale	62						
Seeleyville	65						
Prairie	71						
Terre Haute	73						
Macksville	75						
Liggett	77						
Nelson	79						
Average Revenue in cents		25.5	20†	15.75°	11**	8.5‡	7.5§
Will haul 100 pounds—Miles		79–/–	40†	32°	28**	32‡	32§

From these sources and in this manner these appellants have from the evidence in this case compiled the following table; for the years 1905, on the Vandalia:

TABLE B.

Class of freight	Pounds	Tons	Gross	Revenue per ton	Cwt.	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	6395236	3197.663	$16377.61	$5.12	25.5	79	252615.38	6.48
2	4743012	2371.506	9342.88	3.94	20.	40	94860.24	9.85
3	10688749	5344.3745	16816.99	3.15	15.75	32	171019.98	9.83
4	5868931	2934.4655	6383.41	2.18	11	28	82165.03	7.77
5	41074459	20537.2295	35331.61	1.72	8.5	32	657191.34	5.38
6	9005850	4502.925	6815.06	1.51	7.5	32	144093.60	4.73
	77776237	38888.1635	91067.56				1401945.57	
	Average			2.34		36		6.50

But there is an evident error in the evidence of the statement of the number of pounds of the first class freight and the earnings arising therefrom. The total of first class freight in hundred weights is 63952.36; the rate for the full distance from the City of Indianapolis to the state line is 25 cents per hundred weight, which, on the theory that every pound of this freight was carried from Indianapolis to the state line, would have been only $15,988.09 instead of $16,377.61, as stated in the evidence, if by first class was intended to include only the freight carried at the rate of 25 cents per cwt. And it is quite inconceivable, that all the first class freights were shipped either from the eastern terminus to the western terminus, or *vice versa*. And more than this would have had to be the case, if the amount of tonnage and the earnings stated are correct.

These appellants are of the opinion, that the explanation of this matter is at hand, in that there was included in what was termed first class, the earnings from the transportation of certain articles, the rates for which are based upon the rates for first class proper, as being one and one-half times first class rate or double first class rates. Such classification as one and one-half times first class or double first class rates is well known among railroads and shippers; in some states such a system has been embodied in the statute itself. See *Smyth v. Ames, supra,* 167 U. S. p. 473.

These appellants are of the opinion that the fairer way would be to take the average haul of miles shown for 2nd class—40—and apply it to the first class. If so, we have the following table:

TABLE C.

Class of freight	Pounds	Tons	Gross	Revenue per ton	Cwt	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	6395236	3197.663	$16,377.61	$5.12	25.5	40	127906.52	12.80
2	4743012	2371.506	9,342.88	3.94	20	40	94860.24	9.85
3	10688749	5344.3745	16,816.99	3.15	15.75	32	171019.98	9.83
4	5868931	2934.4655	6,383.41	2.18	11	28	82165.03	7.77
5	41074459	20537.2295	35,331.61	1.72	8.5	32	657191.34	5.38
6	9005850	4502.925	6,815,06	1.51	7.5	32	144093.60	4.75
	77776237	38888.1635	91,067.56				1277236.71	
	Average			2.34		32.85		7.13

Now by Exhibit No. 6. at page 203 of the record, it is shown, that the total number of tons of freight of every description carried over the Vandalia was 7,174,257; by the above table it is shown that 38,888 tons were carried locally, leaving tons not carried locally, 7,135,369, and the average haul of all freight was 88.04. Now deducting the tons carried locally as just done, the average haul of all other tons, was 88.3 miles.

From the tables and figures thus given, we can make a comparison between the situation of the various roads involved in the Smyth-Ames case and the present.

TABLE D.

Name of Road 1892	1 No. of tons carried locally	2 No. of tons of local freight carried 1 mile	3 Average No. of miles 1 ton local freight was carried	4 No. of tons of interstate freight	5 No. tons interstate freight carried 1 mile	6 Average No. of miles 1 ton interstate freight carried
Burlington	574653	91139965	158	1996437	316552193	158
St. Paul Co.	65762	11028287	167	264403	44321384	167
Fremont Co.	158350	24069200	152	846312	128425903	152
Union Pac. Co.	192865	42970322	222	1882112	419300773	222
Omaha Co.	63999	4659127	72	628351	45745647	72
St. Jos. Co.	39657	2005851	50	303550	15355015	50
Kansas City Co.	10823	481515	44	194089	7635016	44
1905						
Vandalia R. R.	38888	1277236.71	32.85	7135369	630053082	88.3

Now take one step further. By dividing the revenues received from each class of freight, by the numebr of tons carried of each class, the result must be the average revenue per ton.

In the following table the first three parallel columns show the average revenue per ton for carrying local freight and the three last columns show the averabe revenue per ton from through freight on the railroads involved in the Smyth-Ames case.

Such process produces the following table. The first three columns showing "No. of tons carried locally." "Total amount received for tons carried locally," and "average amount received for carrying one ton local freight" are taken from "Exhibit 4." p. 530, 169 U. S., *Smyth v. Ames* case, and from Exhibit 20, p. 532; the fourth column "No. of tons interstate freight" is taken from the 2nd column of Exhibit 20, p. 532; the fifth column "the amount received for carrying through freight" is arrived at by deducting from the sums set down in column four of Exhibit 20 as "amount received for freight hauled in Nebraska, including through and local;" the sums set down in column three of the same exhibit as "Total amount received for tons hauled locally."

TABLE E.

Name of Road 1892	No. of tons carried locally	Total amount received for tons carried locally	Average amount received for carrying a ton local freight	No. of tons of interstate freight	Amount received for carrying through freight	Average amount received for carrying thru freight per ton
Burlington	574653	$1237884	$2.15416	1996437	$4300882	$2.15
St. Paul Co.	65762	123033	1.87089	264403	349018	1.32
Fremont Co.	158350	336714	2.12633	846312	1158754	1.36
Union Pacific Co.	192865	398262	2.06498	1882112	3886531	2.06
Omaha Co.	63999	83335	1.38026	628351	867291	1.38
St. Joseph Co.	39657	31004	.7818	303550	185391	.61
Kansas City Co.	10823	6630	.61261	194089	118900	.61

Now Ex. No. 6, p. 203 of the record shows that the total freight earnings of appellee on the Vandalia Railroad for the year 1905 were $4,675,741.62 and the evidence at the points in the record hereinbefore specified show that of this sum, $91,067.56 was earned by the classified freight transported by the appellee, originating and terminating on the line of its railroad between Indianapolis and the western boundary line of the state, leaving a balance of $4,584,674.06, as earned by transportation of other freight, for the year 1905.

This gives the following table as to appellee's earnings from all freights for the year 1905:

TABLE F.

1905 Vandalia Ry. Co.	No. of tons carried locally	Total amount received for tons carried locally	Amount received for carrying 1 ton local freight	No. of tons carried other than locally	Amount received for carrying such other tons	Average amount per ton for carrying such other tons
Vandalia Ry. Co.	38888	$91067.56	$2.34	7135369	$4584673.06	64.2

From these tables it appears that the appellee received from freight affected by the order of the Railroad Commission for the year 1905 $2.34 per ton for an average haul of 32.85 miles as against revenue of 64.2 cents per ton from all other freight business and for an average haul of 88.3 miles.

The above are the results of the rates and classification adopted by the appellee, being applied and collected during the year 1905.

If the rates prescribed by the Railroad Commission had been applied and collected, the result would be represented by the following table:

TABLE G.

Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
77776327	3888.1635	60079.13			1277236.71	
Average			1.54	32.85		4.70

Thus it is shown that the average revenue per ton per mile of the classified freight under the rates established by the Railroad Commission is 237 per cent. of the average revenue received by the appellee during the year 1905, when it applied its own established rates.

Like tables have been prepared from the same sources and in the same manner, showing total tonnage of class freight originating and terminating at stations on the Vandalia Railroad between Indianapolis and the Illinois State line inclusive, and the revenue derived therefrom by the appellee by the application of the rates established by it, and what it would have received had the rates prescribed by the Railroad Commission been applied for each of the years 1904 and 1906.

The result is in 1904: The appellee received under the application of the rates adopted by it an average revenue of $2.33 per ton and average revenue per ton per mile of 7.75 cents.

Had the rates prescribed by the Railroad Commission been applied the revenue per ton would have been $1.52 and the revenue per ton per mile would have been 5.07 cents.

TABLE H.

Total tonnage of class freight originating and terminating at stations on the Vandalia Railroad between Indianapolis and the State line inclusive, and revenue derived therefrom for year 1904, on the class rates in effect.

Class	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	5835066	2917.5	$14627.70	$5.01	30	87525	16.71
2	2813747	1406.8	5337.41	3.79	31	43610.8	12.23
3	10963271	5481.6	16873.24	3.08	30	164448	10.26
4	5398290	2699.1	5784.52	2.14	22	59380	9.74
5	39751349	19875.6	34385.50	1.73	31	616143.6	5.58
6	3730942	1865.4	2795.43	1.50	31	57827.4	4.83
Total	68492665	34246.0	79803.80			1028934.8	
Average				2.33	30		7.75

and

Revenue that would have been derived at the rates prescribed by the Railroad Commission for Classified Freight on the above tonnage.

Computation showing the revenue per ton, and the revenue per ton per mile, if those rates had been in effect.

	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
Total	68492665	34246.0	$52222.12			1028934.8	
Average				$1.52	30		5.07

In 1906, under the application of the rates established by the appellee the average revenue per ton was $2.25 and the average revenue per ton per mile was 7.15 cents. Had the rates prescribed by the Railroad Commission been applied, the average revenue per ton would have been $1.47 and the revenue per ton mile would have been 4.68 cents.

TABLE I.

Total tonnage of class freight originating and terminating at stations on the Vandalia Railroad between Indianapolis and the Illinois State line inclusive, and revenue derived therefrom for year 1906, on the class rates in effect.

Class	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	6735894	3367.947	$17309.56	$5.14	31	104406.35	16.57
2	3124772	1562.386	5939.85	3.80	31	48433.96	12.26
3	12558097	6279.048	19668.21	3.13	31	194650.48	10.10
4	6802485	3401.243	7375.82	2.17	28	95234.80	7.74
5	49175432	24587.716	42500.97	1.73	32	786806.91	5.40
6	12484876	6242.438	9446.74	1.51	32	199758.01	4.72
Total	190881556	45440.778	$102241.15			1429290.51	
Average				2.25	31.4		7.15

Revenue that would have been derived at the rates prescribed by the Railroad Commission for Classified Freight on the above tonnage

and

Computation showing the revenue per ton, and the revenue per ton per mile, if those rates had been in effect.

	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
Total	190881556	45440.778	(R. p. 78) $66936.99			1429290.51	
Average				$1.47	31.4		4.68

3
5

The three following tables show the—

TABLE J.

Total tonnage of class freight originating at Indianapolis and destined to points on the Vandalia line between Indianapolis and the Illinois state line and the revenue derived therefrom on class rates in effect compared with what would have been received had the rates prescribed by the Railroad Commission been put in force, for each of the years 1904, 1905 and 1906.

For The Year 1904.

Class	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	3909146	1954.6	$10051.83	$5.14	30	58638	17.14
2	1773083	886.5	3466.12	3.91	30	26595	13.
3	8042417	4021.2	12693.88	3.15	31	124657.2	10.18
4	3265131	1632.5	3485.66	2.14	22	35915	9.71
5	5873164	2936.5	5454.79	1.86	61	179126.5	3.04
6	1416492	708.2	1052.24	1.48	31	21954.2	4.79
Total	24279433	12139.5	$36204.52			446885.9	
Average				$2.98	36.8		8.10

Revenue that would have been derived at the rates prescribed by the Railroad Commission for Classified Freight on the above tonnage and Computation showing the revenue per ton, and the revenue per ton per mile, if those rates had been in effect.

	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
			(Rec. p. 79)				
Total	24279433	12139.5	$23347.68			446885.9	
Average				$1.92	36.8		5.22

TABLE K.

For the Year 1905.

Class	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	4069903	2034.9515	$10649.79	$5.23	41	83433.01	12.76
2	2882174	1441.087	5885.47	4.08	41	59084.57	9.96
3	7688010	3844.005	12320.68	3.20	32	123008.16	10.01
4	3602011	1801.0055	3911.12	2.17	22	39622.12	9.87
5	6119862	3059.931	5632.74	1.84	61	186655.79	3.01
6	2440560	1220.280	1803.54	1.48	31	37828.68	4.76
Total	26802520	13401.260	$40203.34			529632.33	
Average				$3.00	39.5		7.59

Revenue that would have been derived at the rates prescribed by the Railroad Commission for Classified Freight on the above tonnage

Computation showing the revenue per ton, and the revenue per ton per mile, if those rates had been in effect.

	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
			(Rec. p.79.)				
Total	26802520	13401.260	$26108.09			529632.33	
Average				$1.94	39.5		4.93

TABLE L.

For the Year 1906

Class	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
1	4456371	2228.1855	$11745.81	$5.27	32	71301.93	16.47
2	2003666	1001.833	3905.17	3.90	32	32058.6	12.2
3	8759175	4379.5875	14088.32	3.22	32	140146.8	10.05
4	4430861	2215.4305	4801.64	2.17	28	62032.	7.74
5	6855394	3427.697	6301.56	1.84	61	209089.51	3.01
6	3454245	1727.1225	2644.70	1.53	32	55267.92	4.78
Total	29959712	14979.856	$43487.20			569896.76	
Average				$2.91	38		7.63

Revenue that would have been derived at the rates prescribed by the Railroad Commission for Classified Freight on the above tonnage

Computation showing the revenue per ton, and the revenue per ton per mile, if those rates had been in effect.

	Pounds	Tons	Revenue	Revenue per ton	Average miles hauled	Total ton miles of haul	Revenue per ton per mile in cents
			(Rec. p. 79.)				
Total	29959712	14979.856	$27583.46			569896.76	
Average				$1.84	38		4.84

In these tables the tonnage of all freight originating and ending on the Vandalia Line between Indianapolis and the Illinois State Line, and the tonnage of all freight originating at Indianapolis destined to points on the Vandalia Line between Indianapolis and the Illinois State Line, and the segregation of such totals into the various classes, is found in Witness John H. Buchanan's testimony, pp. 82-86. And the revenue derived from each class of such freight is given in the testimony of the same witness, pp. 86-89.

It is thus seen that the revenue per ton from all stations is considerably lower than the revenue per ton from Indianapolis traffic only; so that basing our calculations on the traffic from all stations is distinctly favorable to the appellee. For the sake of brevity and because there could be no material differences in the figures for either of the three years, as the revenue per ton and the ratio of expenses to earnings vary so slightly, and further because we have the most nearly complete record for the year 1905, we will confine our analysis to the evidence of that year and except in a single instance to the average revenue from all the six classes of freight.

No one should be surprised that the results obtained by the Master from the application of the formula, and by the process adopted by him, should be uncertain and misleading. The situation was this: During the years 1904, 1905 and 1906, the years as to which the evidence was directed, the appellee had in existence a system of keeping accounts calculated and intended for entirely other purposes and not at all for the purpose of discovering the cost of transporting or carrying classified infra state freight affected by the order of the Railroad Commission as compared with other freights transported by it.

The result was that there was no solid basis upon which a comparison of the cost of carrying such respective classes could be arrived at. In preparing for the prosecution of this case, its counsel directed certain of its officers and accountants to undertake from such data to work out the problem.

By taking the way bills issued for the carrying of the freight covered by the order of the Railroad Commission, they were enabled to arrive at the earnings received for such transportation with accurracy, and such earnings time and again have been already stated in this brief. And these appellants have already stated that they do not question the finding of the Master upon that point. Thus we have the minuend from which expenses are to be subtracted, but until we have such expenses as the substrahend, we can not know what the remainder will be. And this subtrahend is a vital factor for the determination of the problem. Until we have that we can not proceed to the next step in the solution of the problem.

The testimony of appellee's witness, *Mr. W. S. Roney,* is found in the record beginning at p. 62. He had been Auditor of the Vandalia Railroad Company from 1876 to the time of giving his testimony—a period of 32 years (p. 62). At page 68 he is asked this question:

"Q. There has been no calculation made, or no means possible, to ascertain the actual relation of operating expenses in the freight service to revenue derived from freight service?"

"A. No, sir."

This question and answer pertained to all freight of every character and description transported by appellee.

Another witness was called before his cross-examination took place, which in the record begins at p. 92.

The following is quoted from pp. 92-94:

"Q. Now, Mr. Roney, is there any way by which you could ascertain the cost of transporting the classified freight originating on the Vandalia line between Indianapolis and the Illinois State Line and terminating on that line?

A. Is there any way by which I could ascertain the freight?

Q. Read the question: (The preceding question was read by the reporter.)

A. No.

Q. You can only give us according to the methods of your bookkeeping what it cost to transport freight on the St. Louis Division between Indianapolis and East St. Louis, but you can't give us the cost of transporting the freight originating on the line and terminating on the line between here and the Illinois state line?

A. Well, I understood the question a moment ago as to giving the cost of class freight, of the different classes, is that correct?

Q. Yes.

A. No, we do not give the cost of the classes of freight shipped on the main line of the St. Louis Division; we do not do that.

Q. You do not even do that on the main line?

A. No.

Q. Well, what is the difference, Mr. Roney, between the rates in Indiana and the rates in Illinois, if you know?

A. I don't know. I don't think there is any appreciable difference.

Q. What is the difference in cost in transporting freight per ton per mile of a given class in Illinois and the trans-

portation of the same freight per ton per mile in Indiana, if you know?

A. I couldn't tell you.

Q. On the St. Louis Division of the Vandalia?

A. I couldn't tell you now.

Q. Would there be any difference?

A. Speaking from my knowledge, I would say no.

Q. You don't know? Is there any one in your employ who could tell us whether there is such a difference?

A. A difference as between the cost of transporting a ton of freight in Illinois and Indiana? Is that it?

Q. Yes, sir; the same distance?

A. No.

Q. You say you don't know of any person who could give me that information?

A. No.

Q. What is your understanding, Mr. Roney, in keeping your books between domestic freight and foreign freight, or local freight and foreign freight?

A. We call local freight all freight originating on the road. We call foreign freight all freight coming to us or going from us.

Q. Yes, to illustrate; local freight is freight originating at any point on your line of road between Indianapolis and East St. Louis and destined to any point?

A. Yes.

Q. It may be Chicago or Los Angeles or New Orleans, that is local freight, according to your definition?

A. Yes, sir.

Q. Foreign freight is originating off of your line of road and destined to some point on your line of road between here and East St. Louis?

A. Yes.

Q. And when you testified this morning and used the word "local" as distinguished from "foreign" freight, you used the word in the sense that you now explain?

A. Yes.

Q. Your company does not keep its records in such shape as to make it *possible* for you to give an estimate of what it would cost to transport the tonnage about which Mr. Buchanan testified this morning for the years 1904, 1905 and 1906? Does it?

A. No.

Q. No *possible way* of arriving at that, is there?

A. There is no way I can think of to arrive at that; that is, the cost of the class, of transporting under these classified rates?

Q. In other words, it is possible for you or your employees to ascertain from the records under your control the revenue derived from freight originating and terminating on your Vandalia line between here, Indianapolis and the Illinois state line?

A. Yes.

Q. From the waybills?

A. Yes.

Q. But there is *no way* from which either accurate or estimated figures can be furnished to determine what it costs to transport that freight?

A. No.

Q. And all of the figures that you gave this morning in your examination in chief in answer to questions propounded to you by Mr. Williams were given with reference to the revenue and the expenses derived and paid on the local freight and foreign freight, as you have defined a few minutes ago what you mean by those terms?

Mr. Williams: And passenger service, too.

Q. Yes, and passenger service?

A. Yes.

Q. As I understand, then, you testified *to no figures* this morning which would *tend* to show the *cost* of *transporting domestic freight*, and when I use the words "domestic freight," I mean freight originating and terminating within the State of Indiana on the line of road known as the Vandalia?

Mr. Williams: I object to that. He doesn't know whether it tends to show it or not. I say what he has testified to does tend to show it. That is a conclusion.

The Master: He can answer the question and let the objection be noted.

A. *No.*"

And on re-examination at pages 97-98.

"Q. Whenever you make up a ratio of operating expenses to earnings, you take all earnings from all sources, and all expenses and compare those?

A. Yes.

Q. And necessarily in that statement of expenses would be included the expenses incurred in moving any kind of freight?

A. Yes, sir.

Q. Classified, as well as any other kind?

A. Yes, sir.

Q. But it would *not be so distributed* as to show what expense was incurred on account *of moving first class, or any other class?*

A. No.

Q. Or any freight under commodity rates?

A. No.

Q. Or moving any distance along the line of the road?

A. No.

Q. Whatever expense was included in moving the

freight, was included in the statement of expenses that you have rendered for each one of these years?

A. Yes, sir. I can hardly see how it would be *possible* to make an *estimate of cost of class freight expenses.*

Q. To take it out of the general expense and allot it to the cost of the particular class of freight, has it been possible yet to do that in railroad bookkeeping?

A. No."

W. C. Downing was called by appellee to testify as to this problem; his testimony begins at page 98 of the record. For six years prior to his examination he was superintendent of the St. Louis division of the Vandalia Railroad extending from Indianapolis to East St. Louis—page 98.

He was asked—pp. 98-99:

"Q. Have you *any means* of telling the court what it *actually costs to handle any particular class of freight between any particular points on your division?*

A. No, sir.

Q. Why can't you do it in a *general way?*

(Italics are ours.)

A. It is *impossible* to separate or localize the expenses so as to *assign any particular cost to a particular class of traffic.*"

These appellants are content to take it that the witness in thus answering, meant that he could not arrive at any exact figures.

He then proceeds to state that to a certain extent it is possible to localize certain items, that can naturally and logically be charged to "freight service" as against other classes of service; that is generally to the freight department of the service. And also that the hauling and trans-

porting of local freight is more expensive than through freight; and gives items showing the increased cost of operating local freight trains between Indianapolis and Terre Haute over the cost of operating through freight trains in the matter of wages, paid to train operators, viz. engineers, firemen and brakemen, and stating that the local freight is required to carry one more brakeman, than the through train; that an engine hauling local freight train consumes more coal than one hauling through freight, for corresponding distances of route; that the cost of handling local freight over the platform at the local stations is an important item to be considered in determining the increased cost of transporting local freight over the cost of transporting through freight, so that in his judgment, all station labor at the various stations should be charged as part of the cost of handling local freight, as that cost stands related to handling through freight; and that at the terminals fifty per cent of employees, clerical and otherwise, should be charged to cost of carriage of local freight; also the cost of switching at the terminals; also that as a rule, the cars in the local train are not loaded as near to their capacity as they are in through trains. Pp. 99-106.

After these statements at page 106; and referring to them, he is asked:

"Q. A less amount of work then was being done for quite an extra amount of cost?

A. Yes, sir.

Q. In the shape of wages, fuel and station labor?

A. Yes, sir.

Q. Mr. Downing, *do you know of any way* by which you can put those three items we have mentioned, for instance, into actual dollars and cents, and say how much

more in a year the cost of handling local freight would be increased over the average per cent of operating expenses for all business?

A. *Not accurately.*

Q. *We tried to do that, didn't we?*

A. *Yes, sir.*

He testifies he knows of no item that would tend to lessen the cost of transporting local freight as compared with the cost of transporting through freight.

On his cross-examination, he says that his testimony in chief was a comparison between the cost of operating a local freight train and of operating a through train; that the local train carries not only freight originating on the line of the road west of Indianapolis and terminating on the line of the road between Indianapolis and the Illinois state line, but also freight originating on the line and terminating beyond the state line on the west and Indianapolis on the east, and that he does not know what percentage of all the freight carried on the local train consisted of the local freight coming under the operation of the order of the Railroad Commission under consideration, and what per cent did not come under the operation of that order—though he supposes a large per cent would be affected by the operation of the order, (Rec. p. 107) but the larger proportion of freight handled on the local freight train is loaded in the cars at our freight house at the terminals and at the local points along the line. (Rec. p. 108.) (But this does not give us the least basis for knowing what portion of the freight is affected by the order of the Railroad Commission. Freights received at any of these stations may go beyond the state line on the west or Indianapolis on the east.) He proceeds to say that he was not basing that statement on any

figures, and if counsel so wished, he might state that *he was guessing at it.* He further states that in his testimony in chief he had no reference to *any particular class of freight,* but to the character of the trains; that the local freight trains frequently pick up car loads of freight destined to some point beyond the state, and occasionally pick up parcels of freight destined to points beyond the state. The amount of such freight thus picked up by local trains destined beyond the state he does not know. (P. 108.) He does not know what per cent it would bear to the entire amount carried by the local freight trains.

"Q. So when you were giving the cost of a local freight train over that of a through freight train, by the increased pay of the engineer and fireman and the wear and tear upon the engine and cars and the other items you have mentioned here, you did not have in mind the transportation of purely domestic freight, but you also had included interstate traffic?

A. I had no reference to the class of traffic at all.

Q. I say, you included interstate traffic?

A. I had reference only to the character of the train.

Q. Yes, but I say the train being a local train, as you understand the term, was hauling interstate traffic? Is not that a fact?

A. Yes, sir.

Q. Now you are unable to give the cost or apportion the cost of the local freight trains between interstate traffic and the domestic traffic, as we understand those terms?

A. I am unable to."

(Record p. 109.)

And again on the same page:

"Q. Now, the point I make is, is there any way of ascertaining what proportion of the tonnage originating

on the line between Indianapolis and the Illinois state line, is interstate traffic destined to some point beyond the state?

A. Not that I know of." (Record p. 109.)

He says that the expense of the stations between the terminals varies, about one-third is charged to passenger service and two-thirds to freight, although where there are men assigned directly to one or the other class of business, their expenses are charged directly to that business. If only one man at the station, one-third to passenger and two-thirds to freight. (P. 110.)

"Q. Well, you understand when I use the term domestic. I mean freight originating in Indianapolis and destined to some point along the line of your road between Indianapolis and the Illinois state line?

A. I don't know anything about that.

Q. You never made any inquiry about that, did you?

A. No, sir.

Q. And you never attempted to collect any data or figures that would show the cost of transportation a ton of freight per mile between Indianapolis and the Illinois state line, purely domestic freight?

A. No, sir."

The figures given by him related to the cost of the local freight train per train mile and not per ton mile. (P. 112.)

Again—

Q. Now, to come to the question of local freight and the cost of maintaining your freight house at a terminal, I don't believe that you stated what percentage of the expense was chargeable to local freight and what expense to the through?

A. We estimate that *arbitrarily* at fifty per cent. I don't know actually what it would be.

Q. By local freight there, you mean freight that is interstate traffic, don't you?

A. Freight handled by local freight trains over the platform.

Q. I know, but isn't it a fact that freight that is handled over the platform is sometimes destined for interstate traffic?

A. Yes, sir.

Q. And isn't it a fact that lots of that freight handled over the freight platform down there at the Vandalia freight house is destined to interstate traffic?

A. I don't know."

(Rec. pp. 113-114.)

"Q. Now, the pay that you give your train men is utterly regardless of what stuff the train hauls?

A. Yes, sir.

Q. And you have not attempted to distribute in any way what you pay them as against the stuff that is in the train they are handling, have you?

A. No, sir.

Q. Now, when it comes to estimate, as you did for the year 1904, the relative cost of hauling this local freight per train mile, as against the cost of hauling through freight trains per train mile, isn't it true that we started on that kind of a basis? Our annual report showed what the average expense per train mile of handling all freight trains was?

A. Yes.

Q. Now, we took that as the basis, didn't we?

A. Yes, sir.

Q. Then we said there are certain items connected with the movement of a local freight, wages, fuel and station labor, that ought properly to be chargeable against that

local freight; but how many other things do you have to take into consideration, Mr. Downing, and what do you have to find out before you could reach any definite comparison, as betwen the average rate that the annual report gave for every freight train per mile, and to divide the expense as to the relative costs as between the local and through freights per mile?

A. We had to take into consideration all items of expense.

Q. And distribute them as between those two services some way, didn't you?

A. Yes, sir.

Q. Now, how do you distribute them?

A. They were distributed largely upon the train mile basis; some of them are distributed on the revenue basis.

Q. Then you said here is a certain item of expenditure that is charged to freight service. Now, I will allot so much of that to the local freight as the number of miles that the local freight train makes bears to the number of miles of all the freight trains, isn't that it?

A. Yes, sir.

Q. The other items you distributed on the revenue basis. Do you remember any items on the revenue basis, or was it all on mileage? I don't recall?

A. Well, the undistributed expenses were apportioned on the train mile basis, yes sir.

Q. Well, now, by undistributed expenses you mean that you had to take all of the operating expenses of the company for the year 1904 and distribute them as well as you could and estimate the actual basis between local and through freight trains?

A. Yes.

Q. And it was quite a complicated and quite a tedious calculation, wasn't it?

A. Yes.

Q. And not *entirely satisfactory when you got through, was it? I know it was not to me.*

A. *It was not very.*

Q. Now, I did not ask you to do that for 1905, or 1906?

A. No, sir.

Q. And you have not done it?

A. No, sir.

Q. And you have none of those figures which you did have to make up the computation for 1904?

A. No, sir, I have not, except the fuel and the wages.

Q. I will ask you to state, Mr. Downing, if in the figures and calculations that were made by yourself and jointly with me, and as to the results which were accomplished and to which you testified before the Railroad Commission, if all of that work was not done in an attempt to ascertain, if we could, the actual or approximate cost of handling this local stuff between Indianapolis and the Illinois state line? Wasn't that our purpose?

A. Yes, sir.

Q. And didn't you try to do it first on the train mile basis, the expense per train mile?

A. Yes.

Q. And then didn't we try it upon the expense per ton per mile?

A. Yes, sir.

Q. *And then didn't we always come blank up against the proposition that we could not state mathematically how much the increase of expense would increase the general average operating expenses for the year?*

A. Yes, sir.

Q. We could not do it in a mathematical statement that would be mathematically accurate.

A. That is true.

Q. For, in the general operating expenses, for the year 1904, were in round numbers 56 per cent. That is the fact. We will assume it 76.4 per cent. Now, there was a ratio that the total expense, operating expense of the company for all items, bore to the entire earnings of the company from all sources?

A. Yes.

Q. And isn't it true that what we were trying to get at was, how much that expense would be increased, stated accurately as far as local and through freight was concerned, as against through traffic?

A. Yes, sir.

Q. *So that we could say to the Commission that on account of these various items that we know cost more for local than for through, business, the per cent. of local to through would be 90 per cent. instead of 76 per cent?*

A. Yes, sir.

Q. *And we couldn't do it, could we?*

A. *We could not.*"

(Record pp. 116-118.)

The appellee called as a witness Mr. D. F. Saur, whose testimony was addressed to the cost of handling freight over the platform. His testimony begins at page 119.

He states he is now chief claim clerk in the general freight office of the Vandalia Railroad Co. at St. Louis. Prior to his present employment he had the title of special agent, and as such he had among his duties, collecting and tabulating statistics, and in connection with such duties he analyzed the expenses of the Indianapolis freight station for the year 1905; and made an estimate, the re-

sult of which was that it cost 70.4 cents per ton to handle the freight across the platform.

His process was to estimate and state the total number of tons of freight handled across the platform, which he puts at 58,866 tons, and the total number of cars of freight handled over the platform which he *estimated* at 42 cars per day, for 306 working days in the year, aggregating 12,852 during the year; thus making an average of 4.6 tons per car; that the total expense of the maintenance and operation of the freight house was for clerical or office force, $16,709.60, and for the platform force, $13,850.45, making a total expense per ton on those accounts of 51.9 cents per ton.

He next, apparently on the theory that the freight house was maintained only for the purpose of handling, distributing and accounting for the freight that was handled across the platform, took up and charged to platform expenses, what he estimated to be a ratable proportion of the maintenance of way and structural expense acc't; in so doing he estimated the cost of maintaining the 4.32 miles of main track located in the Indianapolis terminal division, and apportioned the cost of such maintenance, to passenger and freight accounts on the ratio of the number of passenger and freight cars passing over the same; he charged the total cost of maintaining the 16.4 miles of siding track located in the Indianapolis terminal division to the freight service, (see Record p. 132); and this resulted in a total charge of 94.9 per cent of the cost of maintenance of way and structures in the Indianapolis terminal division to freight service, including interlocking plants and signals; and of this 94.9 per cent chargeable to freight service in general, he charged 8.8 per cent to the platform cost, the 8.8 per cent representing the per cent of freight

house cars to total freight cars handled at the terminal. He next took up the general account of maintenance of equipment, viz. for locomotive repairs and depreciation; and estimated that one engine was used three-fourths of each day in services connected with the platform work, and that 79.6 per cent of all cars in and out of Indianapolis were handled in freight trains; and from this basis he deduced the conclusion that 6.2 per cent of the 79.6 per cent chargeable to the freight service in general should be charged to platform service. (In the body of his testimony the item is set down at .2 per cent, record p. 122, but in the table showing the computation it is put down and applied as 6.2 per cent, record, ex. 3, p. 125.) For all items of "conducting transportation" he used the basis of 8.8 per cent. He charged the total station supplies and all the taxes on the freight house to platform expenses, and from these items of other than "office force" and "platform force" already given, he deduced the conclusion that 16.2 cents per ton should be added to the cost of handling over the platform at the terminal station at the City of Indianapolis, making a total of 68.1 cents, and then turning over the page to page 126, without adding a single item of expense and by a process unknown to these appellants, he increases it, making the total cost of handling over the platform at Indianapolis terminal 70.4 cents per ton. He says that he has never analyzed the Terre Haute freight house, but that there is no substantial difference between the situation at the Terre Haute and the East St. Louis terminals; that the result would not be materially different at either of those terminals, from that arrived at for the Indianapolis terminal. But he says that he made an estimate of the situation at East St. Louis terminal, on

the basis of expense bills and way bills issued and on that basis he came to the conclusion that 90 per cent of the platform clerical expense should be charged to the cost of handling freight over the platform and 10 per cent to take care of the car load business that was handled on track and did not pass through the freight house. His examination in chief is found in the record pp. 119-125.

On his cross-examination he testifies, that he did not know what proportion of the labor of the clerks, and what proportion of their time, was given to foreign or interstate traffic, and what portion of their time was given to domestic or local traffic, and did not know this at the time he prepared the tabulation, which had been introduced as part of his evidence in chief; and yet the cost of their entire time and labor had been charged to make the cost of handling the freight over the platform. (Record p. 127.)

At page 128:

"Q. Now, suppose a part of that tonnage was domestic tonnage, and a part of it was foreign tonnage—tonnage destined beyond the State of Indiana—and the services of the clerks which amounted to $16,000 three-fourths of that service was devoted to taking care of the foreign traffic, and only one-fourth of it was devoted to taking care of the domestic traffic. Then you would say that the cost of the clerks for domestic tonnage would be the result of the division of 58,000 into $16,000?

A. No, sir.

Q. Now, do you know whether or not more service is required of a clerk in foreign traffic than it is in domestic traffic?

A. I don't know.

Q. You don't know anything about that *time?*

A. No, sir.

Q. You just simply came over here as a sort of a statistician for the railroad company? And certain facts were given to you without making any distinction whatever as to the class of tonnage or traffic that you were to consider, except that you were told to consider all of it without making any distinction whatever, and find out the probable cost or estimated cost of handling a ton of freight over the platform?

A. The average cost per ton, yes, sir."

At pp. 130-131, he says there are cars included in the number given that are loaded directly by the shippers. He says he does not know the number of such cars so loaded, nor the percentage of the cars that were loaded directly by the shipper without the intervention of the platform helpers. That he does not know the percentage of cars that are loaded outside of the depot, which are looked after by the clerks in the office and did not take account of that.

At page 131:

"Q. Did you take into consideration the number of cars that were loaded on switches elsewhere in manufacturing plants and establishments and delivered to your freight house down there and taken care of by the clerks of that freight house?

A. I don't quite understand that question.

Q. Well, there are cars loaded at manufacturing establishments in the City of Indianapolis, or on private switches leading up to their plants. Now, there is some clerical labor in handling those cars, and taking the car out and putting it in the train so that it may go to its destination. Now, there is some clerical work necessary

in the loading and the handling of that car, and the clerical work is done by the clerks at your freight depot. Now, did you take that into consideration in estimating the cost per ton of handling the freight over the depot platform?

A. No, sir."

And yet the entire cost of the clerical and platform force employed at the freight house is charged to the 12852 cars with their aggregate of 58866 tons named by the witness, though they also performed all the clerical work done at this terminal in billing the 133146 other cars passing through the Indianapolis terminal and of inspecting deliveries from car load lots destined for this terminal, from whatever point they were shipped, and to a certain extent inspecting the loading of outbound carload lots. And this, when this witness did not pretend to know how much of the time of those forces, was given to the different classes of work.

At page 132:

"Q. Now, Mr. Saur, would it be possible for you to ascertain the cost of the expense of handling a ton of freight over the platform for purely domestic purposes, leaving out of consideration all expense incident to foreign traffic, and the expense that you charge in your estimate for the use of rails and tracks and other things that are used almost exclusively for foreign traffic, would it be possible for you to arrive at the cost of the expense of handling a ton of freight of purely domestic traffic on that basis?

A. I don't know.

Q. For instance, you have got here mileage of track in Indianapolis terminal division, first main, 2.8 miles; second main, 2.24 miles; sidings, 16.4 miles. Now,

would you say that that trackage, all of that trackage, would be necesary and be utilized in the transportation of purely domestic freight received at the freight depot at Indianapolis and destined to some point on the line between Indianapolis and the Illinois state line?

A. I don't know what portion or portions may be necessary to be used in the handling of such traffic."

These appellants think that there is no ground for supposing or adopting the theory that the 16.4 miles of side track, were ever constructed or maintained for the purpose of handling the 12852 cars, as stated by witness, whose freight was carried across the platform at the terminal station.

After the examination of this witness, the complaintant rested.

The defendant then called as witnesses, two of the employees of the appellee, who had testified before the Railroad Commission, led to that course by the evidence given by them respectively before that body.

The case made by the complainant being based upon the *supposed or estimated* cost of handling and transporting the classified freight covered by the order of the Commission, defendants were necessarily driven to call as witnesses, persons in the employ of the railroad company, who had information upon that subject.

The first witness called by the defendant was Edward F. Graham.

His testimony begins at page 134 of the record.

He was at the time of his examination freight agent of the Vandalia road at the Indianapolis terminal, had general supervision of the matters connected with the freight station, the handling of the freight both in and out of the station, and had under his control all of the

employees directly connected with the freight station, (p. 134); had control of the records of the number of cars that come into Indianapolis, and the number of cars that go out of Indianapolis, of freight at that station, but had nothing to do with the through freight which went round the Belt railroad. Has had this position and these duties since 1902; and before that for 18 years was chief clerk and cashier in the same office. By reason of these connections and this experience, he had fair knowledge of the character of freight that is shipped over the platform, and the character of the freight that comes in on the inbound trains and the work necesary to handle all such freight. He furnished witness Saur with some information and gave him access to our records." He did not know how much information Saur made use of. (P. 135.) He had a record of the number of employees that worked in the freight department as clerks and as handlers, the number of cars loaded in the freight station, number of inbound cars that came into the city, and the number of inbound cars unloaded by the consignee. *From his experience as such and from the information he had, he was not in a position to give an estimate as to cost of handling a ton of freight over the platform.* Before the Railroad Commision he did give an estimate of such cost on the basis of dividing the total cost of his office by the total tonnage. (P. 236.)

At page 139 and following, he testifies as to his clerical office force—27 clerks in all. Their duties include the labor of looking after inbound and outbound freights in less than car load lots in the City of Indianapolis, and also in looking after the cars that are loaded in car load lots at the Indianapolis station and elsewhere in the City of Indianapolis, they also have duties in connection with

the handling of outbound car load freights from other points; also they are charged with the duty of looking after car load lots of inbound freight destined to some consignee residing at the City of Indianapolis. He then explains the practical way in which freights are actually handled over the platform, by the freight handlers, and the clerks engaged in that performance as checkers, and the receiving clerks who make out a receipt to the shipper, itemizing the goods, when the shipper presents a receipt. All shippers do not present receipts. (Pp. 140-141.) (This implies that at least some shippers prepare and present receipts.)

The remainder of the clerical force are directed to looking after way bills, etc. Then on page 141, *et seq*:

"Q. Now, what are the duties of your clerks in reference to the car load lots that are shipped out of Indianapolis? Car load lots that are loaded by the shipper and not by the freight handlers over the platform?

A. On our own rails or on the rails of foreign lines?

Q. Both.

A. Any cars that are loaded by the shipper on an industry located on our own lines, they make a request on us for an empty car to load, and a car is placed for their loading. They complete loading themselves; advise us that the car is ready to go forward, and to render a shipping bill for the shipment. Then in turn it is taken up by the bill clerk and a way bill made for it and proper directions given to the conductor to handle the car.

Q. Now, that has reference to all cars, car load lots, that go to Vincennes, or just here to Terre Haute?

A. Any point that is reached over our line in the westward movement.

Q. Your office force down there takes care of all the

freight in car load lots that goes over the Vincennes division as well as it takes care of all freight on the St. Louis division?

A. Not at the present time.

Q. It did in 1905?

A. No, sir; not on all outbound business.

Q. Only on the St. Louis division on outbound business?

A. That is all."

This force handles the way bills and other bills in reference to car load lots shipped out of Indianapolis, which are loaded by the shipper, handles all the necessary papers and reports on anything that moves over "our road;" a car load lot shipped from Vincennes, the office force would look after that, although it was not handled over the platform; the same would be true with reference to goods shipped in from St. Louis, Terre Haute, or any place else, even though the freight was not handled over the platform. (P. 142.) In case perishable goods are received in car load lots to be unloaded by the consignee, the freight is inspected by some one belonging to his force; in many instances freights loaded by consignors are also inspected by the same force. (P. 143) The percentage of cars inspected after loading before shipment, is slight; the inspection of inbound cars is considerably more; these forces are also charged with the duty of looking after freight shipped out of that station over another division of the Pennsylvania or Pan Handle Railroad Company on outbound business. Of the whole number of cars passing through Indianapolis—stated by Mr. Saur as 145,998 cars in the year—he has no complete record and it would take some figuring to ascertain about what per cent he had of those cars to do with, but a large

part of them would enter into his accounts. (P. 144.) His force had considerably more to do than simply make an estimate of cars in and out of the freight house. He does not believe that the records are kept in such a way as that they show the number of inbound car load lots that were unloadeed by the consignee. He does not know of any record that is kept showing the number of cars loaded in car load lots inbound destined to the City of Indianapolis proper, that is to Indianapolis consignees. There is about as much labor so far as the clerks in his office are concerned in handling the shipment destined beyond Indianapolis as there would be for a shipment to Indianapolis; his forces are obliged to make a record of the way bill, abstract it, report it to the auditor, make an expense bill, submit it to connecting lines and secure a receipt for it; this would apply to any freight originating or passing over our lines except where they bill through to points on the Pan Handle (p. 145); but to a great many points east, north and south of Indianapolis where the freight originates on "our line," car load lots, the bills go through our office, and the clerical force takes care of it; and about as much clerical work is required to look after such a car, as there is to look after an inbound car load lot consigned to Indianapolis and to be unloaded by the consignee. He can not from his years of experience tell what per cent of the traffic originating on the St. Louis division destined to some point passing through Indianapolis, what per cent of the cars are handled by his forces; but says more than half or more than three-fourths are handled by his forces. (Pp. 146-147.) (According to Saur's testimony (given at record p. 130), 145,998 freight cars came into the Indianapolis terminal division, and the cost of the labor and services on three-

fourths of them as now stated by the witness, was charged by Saur to the handling across the platform the freight brought to and taken from the platform by the 12582 cars mentioned by him.) The witness further says that his office force also took care of car load lots originating from the inbound business on the Vincennes division, on the Logansport division and the Peoria division, and taking all these into account, witness says he thinks these cars so handled by his forces were considerably more than 75 per cent of all the cars handled by them. (P. 147.)

At page 149 witness says the cars of the inbound and the outbound freight for the year 1905, were counted, and there was no occasion for estimating them; the numbers were, inbound, 3004; outbound, 6990, or a total of 9994; now add 5 cars per day for east bound for 306 working days in the year—1530—making a grand total of 11524, instead of 12852 given by Mr. Saur.

At pages 153-154 witness aproves the method by which Mr. Saur reached his conclusion as to the cost of handling freight over the platform at the Indianapolis terminal as a reasonable one, and when asked why, he answered, p. 154: "I don't see how they could begin to separate that expense at all."

Q. Just simply because you don't see how you could separate it, you should charge it all to the platform, is that it?

A. I might answer yes on that.

Q. What?

A. That is the way it looks to me.

Q. Is it not a fact Mr. Graham that more time is spent by your officie force in looking after inbound carload lots and inbound freight carload lots, in looking after freight originating on your line in carload lots passing through this

terminal to some point off of your lines, and in looking after some carload lots originating off of your line and passing to some point on your line, than they give to the looking after of purely platform freight or local freight if you please?

A. Well that is possible yes.

Q. Isn't that the fact?

A. Well it would seem that it would be necessary.

Q. (Interrupting) To be so.

A. Not to be so, but in order to expediate and take care of all the business, you must have your organization.

Q. That is not what I am asking you. I am asking you if more of your clerical service is not required to look after that business I have enumerated than to look after the platform business or local business going over your platform into local cars?

A. I don't know how you could distinguish between them very well.

Q. You make the distinction yourself Mr. Witness. You have testified about the class of services required on these car load lots about which you have testified and you have been in that office for a great many years as clerk and as agent. Now, I am asking you if in your opinion more services are required of your clerks in looking after this carload lot question?

A. Well, the bulk of the business is carload.

Q. (Continuing) Than in looking after simply the platform business?

A. What puzzles me in the matter is how you are going to draw a line and separate it so distinctly.

Q. It is puzzling, I will admit. I want you to give me an opinion as to whether or not their services are not

directed more to the carload business than to the platform business? Isn't that the fact?

A. It is attributed—if it is attributed exclusively to the clerk's services, I should say yes.

Q. I am confining this question to the clerk's services, yes.

A. But there are other expenses that the clerks have nothing whatever to do with.

Q. I am only confining this to the clerk's services, you understand that, don't you?

A. Yes, I see that.

Q. So that you don't have to consider the platform end?

A. The time consumed by clerks in entering the volume of business is, of course, greater than the platform business in connection with all the freight, and would necessarily require more force to do so.

Q. Well, if it requires more service to look after the carload lots than purely local—you say that is the fact, isn't it?

A. It is necessarily a fact, so far as the clerks are concerned.

Q. Yes, so far as the clerks are concerned. Now, how much more than fifty per cent. would you say are the services of your clerks required to look after the carload lots than the purely local business, or freight passing over your platform?

A. Well, I wouldn't like to say off-hand. That can be estimated, I expect. That is drawing the line pretty fine.

Q. Give it in percentage.

A. It would be pretty hard to do.

Q. Well, I know, but you can give an estimate? Wouldn't it take about fifteen per cent. of your force down there to look after the platform business, and the balance

of your force down there to look after the carload business?

A. Well, I should say it would take more than that ; yes considerably more than that.

Q. More than what?

A. More than fifteen per cent.

Q. What in your judgment would it take?

A. I should think it would take fifty per cent. of it, at least.

Q. You said it took a good deal more than half a few minutes ago?

A. Which?

Q. You said a few minutes ago it took considerably more than half of the services of your clerks to look after the carload business than it did to look after the tonnage passing over the platform.

A. Yes, that is true.

Q. That is true, is it?

A. Yes, sir.

Q. Now, I will ask you whether or not fifteen per cent. of the services of your clerks wouldn't look after the tonnage over the platform?

A. I should think twenty per cent. anyway.

Q. Twenty per cent. anyhow. All right. Now if twenty per cent. of your clerks would look after the tonnage passing over your platform, and the other eighty per cent. of the services of your clerks were required to look after the carload lot business about which you have testified, would you now say that it is fair to consider the entire expenses of your working force, as Mr. Saur did in his estimate, in arriving at the cost per ton of handling freight over the platform?

A. I don't know how you are going to get at it any differently.

Q. I am not asking you if you know of any way to get at it differently. I am asking you whether you as an employe of the Vandalia, a man of experience, would consider it fair, when it only took twenty per cent. of the time of your office force in looking after the tonnage passing over the platform, and eighty per cent. of the time of your office force in looking after the carload lots, whether or not you would consider it fair to take the whole of the expense of your clerks, in estimating the cost yer ton of handling freight over your platform?

A. I can't see any other way, but what that would all have to come in together there. I don't see how it could be so divided as to make a separation there."

(Record, pp. 154-156.)

All of which comes simply to this: Because the railroad company in the past has not kept its accounts in such a manner as that the cost of handling freight over the platform at the Indianapolis terminal can be rationally or reasonably separated from a very large amount of other services by the persons engaged in performing the sum total of such services, such sum total of such service may be charged to the cost of handling freight over the platform in order to establish the invalidity of the order of the R. R. Commission.

Again, at p. 159 in a further effort to sift matters and find out this question of cost of handling over the platforms at the terminals, this examination was had of the witness:

"Q. Now about the cars that are loaded by the shipper at this terminal in carload lots and shipped out over your lines for the year 1905, could you find out the number of such cars?

A. No sir we don't keep a separate record of that. The

cars some to us, you know, from any place from the various connections and are loaded on the track—

Q. (Interrupting.) What per cent. of the cars, car-load-lots now, that come to or pass through this terminal over your line are loaded here in Indianapolis by the shipper, or unloaded by the consignee?

A. Well, there is quite a difference on the outbound movement than on the inbound, I should think.

Q. Well, take them separately then. What in your judgment is a correct estimate in percentage of the cars that are unloaded by the consignee, inbound cars received over your line as compared to the total number of cars accounted for by your office?

A. Well, we have never kept our records separated, so I could not intelligently—that, as to about that proposition.

Q. Can you give an opinion? Well then strike out that question. Is there any way by which you can obtain that information accurately?

A. No sir, not accurately.

Q. Is there any way by which you can estimate it?

A. No, sir.

Q. It is a fact however, isn't it that a large proportion of the cars that you give us as inbound or outbound cars, passing and received at the Indianapolis terminal are cars that are either loaded by the shipper and sent out over your lines, or cars that are shipped in here and unloaded by the consignee.

A. Yes, sir.

Q. More than 80%, more than 90% of those cars are of that character? Is that right?

A. Well I don't know about that. There is a large number of those cars.

Q. I say, more than 90% of those cars passing through

and coming in this terminal inbound and outbound, are cars that are either loaded by the shipper or unloaded by the consignee.

A. Well, I should judge in that neighborhood at least. There is a large per cent. of them.

Q. The most of the classified freight, in fact all the classified freight, that passes over your platform and handled by your freight handlers in the depot, belongs to either the first, second, third or fourth class, that is right isn't it?

A. Yes, sir.

Q. And fifth and sixth class freight is always carload lots and loaded by the shipper?

A. Yes, that is true."

As this question of the cost of handling the freight across the platform at the terminals, is made much of in the appellee's evidence, these appellants have endeavored to go into it quite carefully. They are of the opinion that the testimony of the witness Graham from his long and immediate connection with the service of handling platform freight, is much more worthy of acceptance than that of Mr. Saur who, as already quoted, states that he does not know whether or not more service was required of the clerks in the terminal freight office at Indianapolis in the foreign traffic than in the domestic traffic—that he did not know anything about that—that he came over to Indianapolis as a sort of statistician for the railroad company, and certain facts were given to him without making any distinction whatever as to the class of tonnage or traffic that he was to consider, except that he was told to consider all of it without making any distinction whatever and find out the probable cost or estimated cost or average cost per ton for handling a ton of freight over the platform.

He took the total cost of the clerical office for the year $16,709.90 and the total tonnage of 58866 tons of the freight handled over the platform, and divided the total cost of the clerical force by the total tonnage, and stated that 28.4 cents per ton should be taken as the cost of handling of the freight across the platform on account of the services of the clerical force. That was a very simple mathematical process. At page 124, Saur testified 90 per cent. of the cost of the clerical force should be charged to cost of handling across the platform, and yet he charges 100 per cent. But now comes Mr. Graham, who was on the ground and saw the work from day to day as it was being done, and at page 156, as already quoted, testifies that twenty per cent. of the clerical force could look after the tonnage over the platform. This item alone would reduce Saur's estimate 22.7 cents per ton, making the charge to platform expenses on this account 5.68 cents per ton instead of 28.4 cents per ton; and the total cost set down by Saur at 70.4 cents per ton to 47.7 cents per ton.

Witness Downing, Superintendent of the St. Louis Division, testified, as already set forth, at page 103 of the record, that fifty per cent. of the station labor at the terminals should be charged to local and fifty per cent. to the through freight; at (pp. 113-114 of the record) he testifies:

"Q. Now, to come to the question of local freight and the cost of *maintaining your freight house at a terminal*, I don't believe that you stated what percentage of the expense was chargeable to local freight and what expense to the through?

A. We estimate that *arbitrarily at 50 per cent.* I don't know actually what it would be."

If we should accept this testimony as of any value whatever, it would cut the item of 68.1 cents per ton as fixed by

Saur at the foot of page 125, to 34.05 cents per ton. Inasmuch as he expressly states that the figures given by him are but an arbitrary estimate as to the correctness of which he will not vouch, we reject his testimony on this point as wholly valueless.

This leaves us the testimony of Saur and Graham. We think a patient study and analysis of the testimony of these two witnesses will enable us to work out the cost of handling the freight across the platform with approximate correctness.

1st. *Saur's method.*

He was the statistician who worked from data furnished him, the correctness of which he would not vouch for; and for the correctness of which in the main no other witness has vouched.

By this table on page 125, he takes the total cost of office force, $16,709.90 and divides it by 58866 tons and arrives at 28.4 cents per ton, all of which he charges to handling freight across the platform; and the total cost of platform force, as $13,850.45 and again dividing by the tonnage, he has charged on that account to handling over the platform as 23.5 cents per ton, or a total of these two items of 51.9 cents per ton. Yet on page 124 of his testimony, only 90 per cent. of the platform clerical force should be so charged.

This table is based upon 12,852 cars handled in and out of the freight house for the year and he finds that that number is 8.8 per cent of the 145998 of total freight cars in and out of Indianapolis; we will not question his mathematics in arriving at the 8.8 per cent. on that basis. But by witness Graham's testimony, as already shown, there were but 11524 cars passed through the station (9994 plus 1530) and 11524 cars are 7.8 per cent. of the 145998 of the total freight cars; the extensions made in the right column

under title of "Freight House Proportion" must be corrected accordingly, which would give a footing of $8688.91, and again divided by the number of tons, we get 14.76 cents as cost per ton on account of these items, or making a total of 63.80 as against the total of 68.1 cents he had set down. (It is, however, to be noted that in his calculations on his own basis of 8.8 per cent. of 94.9 per cent. and of 6.2 per cent of 79.6 per cent. he has made errors in his extensions in no less than thirteen instances, resulting in errors aggregating the sum of $41.52).

2nd. *Apply Graham's testimony*:

Next we will apply the testimony of Graham that 20 per cent. of the clerical force could look after the handling of the tonnage over the platform.

Then we must recast Saur's tabulation as follows:

Office force, 20% of 16709.90—3341.98		5.67 cents
Platform force	13850.45	23.5 cents
		29.17 cents
To this add 14.76 cents per ton gathered under the heading of "Cost per ton for additional Expense."	14.76	
We have total expense per ton		43.93

We have tabulated a sheet showing these results, as follows:

TABLE Q.

COST PER TON FOR ADDITIONAL EXPENSES—SAUR'S ORIGINAL

	Total charge	Proportion attributable to passenger cars		Proportion attributable to freight		Ex attribu 12852 fre c	
M. of W. & S. except I. P. & S.	$19,565.06	5.1%	$ 997.82	94.9%	$18,567.24	8.8%	
M. of E. Loco Repairs	16,932.10	20.4%	3,454.15	79.6%	13,477.95	6.2%	
Depreciation	5,082.01	20.4%	1,036.73	79.6%	4,045.28	6.2%	
C. T. Supedintendence	2,692.39	20.4%	549.25	79.6%	2,143.14	8.8%	
Station Supplies	587.91			100 %	587.91	100%	
Yard Supervision Rec. Clks.	1,302.10			100 %	1,302.10	8.8%	
Yard Supervision other	12,213.28	20.4%	2,491.51	79.6%	9,721.77	8.8%	
Yardmen	24,421.37	20.4%	4,981,96	79.6%	19,439.41	8.8%	
Yard Eng. and Fireman	13,826.31	20.4%	2,820.57	79.6%	11,005.74	8.8%	
Yard Loco. Fuel	18,712.77	20.4%	3,817.40	79.6%	14,895.37	8.8%	
Enginehouse men	3,326.52	20.4%	678.61	79.6%	2,647.91	8.8%	
Fuel Sta. Operation	2,177.72	20.4%	444.25	79.6%	1,733.47	8.8%	
Loco. Water Supply	980.43	20.4%	200.00	79.6%	780.43	8.8%	
Loco. Stores	577.13	20.4%	117.73	79.6%	459.40	8.8%	
Loco. Other Supplies	622.21	20.4%	126.93	79.6%	495.28	8.8%	
Policemen	2,760.67	20.4%	563.17	79.6%	2,197.50	8.8%	
Interest on Engines	4,155.64	20.4%	847.75	79.6%	3,307.89	6.2%	
Taxes, $7,000—$2.13—	149.10			100. %	149.10	100. %	
	130084.72		23,127.83		106,956.89		

SAUR'S ESTIMATE.

	Total Cost	Cost Per ton
Office Force	$16709.90	28.4
Platform Force	13850.45	23.5
	$30560.35	51.9
Cost per ton for additional expenses		16.2
Total		68.1

Average cost per car for handling cars other than freight house cars in cents.

SAUR'S REVISED

	Expense attributable to 2 freight house cars		Expense attributable to other 133146 cars in and out of Indianapolis		Expense attributable to 11524 freight house cars		Expense attributable to 134474 other cars
%	$1,633.91	91.2%	$16,933.33	7.8%	$1,448.25	92.2%	$17,118.99
%	835.63	93.8%	12,642.32	6.2%	835.63	93.8%	12,642.32
%	250.81	93.8%	3,794.47	6.2%	250.81	93.8%	3,794.47
%	188.60	91.2%	1,954.54	7.8%	167.17	92.2%	1,975.97
%	587.91			100%	587.91		
%	114.58	91.2%	1,187.52	7.8%	101.57	92.2%	1,200.53
%	855.52	91.2%	8,866.25	7.8%	758.30	92.2%	8,963.47
%	1,710.67	91.2%	17,728.74	7.8%	1,516.28	92.2%	17,923.13
%	968.50	91.2%	10,037.24	7.8%	858.45	92.2%	10,147.29
%	1,310.79	91.2%	13,584.58	7.8%	1,161.84	92.2%	13,733.53
%	233.02	91.2%	2,414.89	7.8%	206.54	92.2%	2,441.37
%	152.55	91.2%	1,580.92	7.8%	135.21	92.2%	1,598.26
%	68.68	91.2%	711.75	7.8%	60.88	92.2%	719.55
%	40.43	91.2%	418.97	7.8%	35.84	92.2%	423.56
%	43.59	91.2%	451.69	7.8%	38.63	92.2%	456.65
%	193.38	91.2%	2,004.12	7.8%	171.41	92.2%	2,026.09
%	205.09	93.8%	3,102.80	6.2%	205.09	93.8%	3,102.80
%	149.10			100%	149.10		
	9,542.76		97,414.13		8,688.91		98,267.98

GRAHAM'S EVIDENCE.

		Total Cost	Per Ton		
	20%	$ 3341.98	5.68	80%	13,367.92
	100%	13850.45	23.5		
			29.18		
			14.76		
			43.94		111,635.90

Cars	Expense	
(134474—	$111,635.90)	83

And in each case there should be an abatement from the figures which we have set down as the cost of handling the freight at the terminals, on account of other items set down under the head of "Cost per Ton for Additional Expenses;" viz. station supplies $587.91 and taxes $149.10 are charged as an entirety against the cost of handling the freight over the platform at the Indianapolis terminal. The supplies were used for all clerical purposes and by the clerical forces, who devoted a large part of their time, estimated by the witness Graham at 80 per cent, to other work. The terminal freight station was used for the housing and accommodating the clerical force incident to the handling of the 134474 other freight cars in and out of Indianapolis as well as the 11524 freight cars used for the platform freight. This was manifestly unfair. The items, it is true, were small. but they are important as showing a steadfast purpose to solve every doubt in favor of the Railroad Company and against the validity of the order of the Railroad Commission; whereas exactly the opposite presumption should obtain.

Beyond this it is evident that the platform force was to some extent employed in services connected with carload through freight, Graham's testimony, pp. 143, 148, 149. The evidence does not fully disclose what portion of their time was thus employed, but some allowance evidently ought to be made on this account.

From all the evidence in this cause, taking into consideration the want of personal knowledge on the part of Saur of the items forming the basis of his computation and his manifest inclination to give the Railroad company the benefit of every doubt, these appellants feel very safe in asserting that the total cost of handling freight across the platform can not be placed above 40 cents per

ton or 2 cents per hundred weight and they adopt this figure for their further investigation.

They are further assured by other considerations that this is a sufficient allowance.

Witness Graham testified (Rec. p. 160) that platform freight consisted of 1st, 2nd, 3rd and 4th classes and that the 5th and 6th classes are always car load freight. Witness Downing testified (Rec. p. 118) that if all of the freight had been handled on the basis of the increased cost as to local freight, the cost would have been increased 14.6 per cent and (Record p. 114) that by local freight he meant freight handled over the platform by local freight trains. By Exhibit No. 6, at page 203, it is shown that the total freight earnings for the year 1905, was $4,675,741.62 and the number of tons carried one mile was 631,595,944. Therefore by dividing $4,675,741.62 by 631,595,944, we get the average earnings from carrying one ton of freight one mile as 74-100 of one cent and it is so set down in the tabulation, and that the average cost was 59-100 of one cent per ton per mile; therefore the ratio of expense to earnings *on freight only* is 79.73 per cent and this is higher than any ratio for general business named by appellee.

If we therefore take the 79.73 per cent. of the earnings as the cost or expense for carrying freight and add to it the 14.6 per cent. as the increased cost for local freight we have 94.33 per cent.

Total freight earnings	$4,675,741.62
94.33 per cent. of total freight earnings on the basis that all freight had been carried as local freight	4,410,627.07
On the basis that all the freight had been carried at the average revenue for the first four	

classes of the classified freight covered by the order, as shown by table C of this brief, $3.53 per ton, the total earnings would have been.....$25325127.21

(This amount shows how insignificant was the amount of the freight covered by the order of the Railroad Commission; it was in fact for the year 1905 for all six classes —38,888 tons of a total of 7174257 or about one-half of 1 per cent, to be exact 54-100 of 1 per cent.

Dividing that amount of the expense by the earnings on that basis, the percentage of expenses to earnings would be..... 17.41

By the same table C, (p. 23 this brief) the average revenue per ton of all six classes is $2.34, as against $3.53 per ton for the four classes, in which the freight in these cars is actually handled over the platform by the railroad company; we will make the same calculation on the basis of the average earnings per ton in all six classes with the following result:

Freight earnings (Rec. p. 203) $4,675,741.62
Average earnings per ton per mile (cents) Rec. p. 203) ..... .74
Average cost per ton per mile (Rec. p. 203 .59
Percentage of expenses to earnings on the rate charged by R. R. Co..79.73
Increased cost, if all freight had been handled as local freight (Per cent 14.6

Percentage of expenses to earnings, if all freight were handeld as local freight..... 94.33%
Expense, if all freights were handled on basis of cost of local freight $4,410,627.07
Average revenue per ton from six classes of clasified freight Table C, of this brief 2.34

Earnings if the 7,174,257 tons had been carried on average revenue per ton for the 6 classes.....	$16,787,761.38
Dividing the expenses $4,410,627.07 by the above earnings, will give the percentage of expenses to the earnings, viz	26.27

From the information and tables already given, we are now ready to make a comparison between the situation of the several railroads involved in the Smyth-Ames case and the presnt case.

The method by which this table is elaborated is explained at the foot of the table.

TABLE M.

COMPARATIVE STATEMENT OF MOVEMENT OF FREIGHT AND REVENUE RESULTING THEREFROM.

Name of Road	Number of tons carried locally	Total amount received for tons carried locally	Number of tons of local freight carried one mile	Average miles one ton was carried	Average amount received per each ton	Amount received per ton per mile	Total cost of local business
1891.							
Burl. Co.	538824	$1066871	73075310	135	$1.98	.0146	76.24
St. Paul Co.	64496	110993	10267118	159	1.72	.0108	80.78
Fremont Co.	141056	348408	21863680	155	2.47	.0159	59.87
Un. Pac. Co.	152028	278211	28908124	190	1.83	.0096	78.94
Omaha Co.	61448	75581	4579104	74	1.23	.0165	130.26
St. Jos. Co.	25078	21817	1497658	59	.87	.0145	106.44
Kan. Cy. Co.	8743	6732	403751	46	.77	.0167	109.54
1904							
Vandalia	34246	79803.80	993134	30	2.33	.0775	.....
1892							
Burl. Co.	574653	$1237884	91139965	158	$2.15416	.0135	74.23
St. Paul Co.	65762	123033	11028287	167	1.87089	.0111	75.96
Fremont Co.	158350	336714	24069200	152	2.12633	.0139	80.71
Un. Pac. Co.	192865	398262	42970322	222	2.06498	.0092	66.44
Omaha Co.	63999	88335	4659127	72	1.38026	.0189	103.12
St. Jos. Co.	39657	31004	2005851	50	.78180	.0154	84.23
Kan. Cy Co.	10823	6630	481515	44	.61261	.0138	85.19
1905							
Vandalia	38888	$ 91067	1127752	32.85	2.34	.0713	26.27
1893							
Burl. Co.	583294	$1242416	93703675	160	$2.13	.0132	75.51
St. Paul Co.	78753	142542	12848551	163	1.81	.011	74.58
Fremont Co.	187804	424437	26855972	143	2.26	.0158	63.66
Un. Pac. Co.	220661	413714	45948736	208	1.88	.009	68.51
Omaha Co.	68237	80519	4257988	62	1.18	.0188	104.14
St. Jos. Co.	50452	33802	2774860	55	.67	.0121	72.05
Kan. Cy. Co.	15484	9445	658534	42	.61	.0143	86.50
1906							
Vandalia	45440	$ 102241.16	1354112	31.4	2.25	.0715	.....

The first column of this statement is taken from Exhibit 20, Smith-Ames, first column, headed "Number of tons carried locally."

The second column is taken from Exhibits 4 and 19 Smith-Ames, third column headed "Total amount received for tons carried locally."

The third column is taken from Exhibit 20, Smyth-Ames, third column, headed "Number of tons of local freight carried one mile."

The fourth column is the result of dividing column 3 of this statement, "Number of tons of local freight carried 1 mile" by column 1, "Number of tons carried locally."

The fifth column is taken from Exhibits Nos. 4 and 19, second column, headed "Average ambount received for each ton hauled."

The sixth column is the result of dividing the figures in column 2 of this statement, "Total amount received for tons carried locally" by the figures in column No. 3, "Number of tons of local freight carried one mile."

The seventh column is taken from table on page 429, Smyth-Ames, headed "Total cost of local business."

Data relating to the Vandalia road is taken from the evidence in this case as tabulated in Tables Nos. H. (p. 33), B (p. 21), C (p. 23), G (p. 31) and I (p. 35) of this brief, herewith submitted. These tables do not show the figures given in the third column of our statement, "Number of tons of local freight carried one mile." This was ascertained by multiplying the number of tons by the average miles hauled, as given in Tables Nos. H (p. 33), B (p. 21), C (p. 23), G (p. 31) and I (p. 35). The percentage of expense to earnings of the Vandalia for 1905 given in this statement is taken from the computation on page 78 of this brief.

Comparing the records of the Nebraska roads for the year 1892 with the record of the Vandalia road for 1905, we wish to call particular attention to the number of miles one ton was carried by all of the Nebraska roads and that the number of miles shown in the Vandalia record is 32.85, lower than any of the Nebraska roads, while the revenue per ton is $2.34, which is higher than that received by any of the Nebraska roads. The discrepancy between the records is more effectively indicated by the amount received per ton per mile, which is the only fair method to compute freight revenue, and we find that the revenue per ton per mile received by the Vandalia is more than three times the highest revenue per ton per mile received by either of the Nebraska roads and is more than seven times the lowest revenue per ton per mile received by either of the Nebraska roads.

While there are slight variations in the revenue per ton per mile for the different years of all the roads, the statement we have made that "the revenue per ton per mile received by the Vandalia is three times the highest received by any of the Nebraska roads and seven times the lowest revenue per ton per mile received by any of the Nebraska roads" applies to the years 1904 and 1906 as well, in comparison respectively with the records for the years 1891 and 1892 of the Nebraska roads.

For comparison of greater detail between the records of the Nebraska roads and the Vandalia's record, we have taken the year 1892 for the Nebraska roads and the year 1905 for the Vandalia.

TABLE N.

Name of Road 1892	(1) Number of tons carried locally	(2) Number of tons of interstate freight	(3) Total amount received for tons carried locally	(4) Amount received for carrying through freight	(5) Number of tons of local freight carried one mile	(6) Number of tons of interstate freight carried one mile	(7) Average number of miles one ton local freight was carried	(8) Average number of miles one ton through freight was carried	(9) Average amount received for carrying one ton local freight	(10) Average amount received for carrying one ton through freight	(11) Amount received per ton per mile for local freight	(12) Amount received per ton per mile for thru freight	(13) Total cost of local business	(14) Cost vs. percentage of business
Burlington	574653	1996437	$1237884	$4300882	91139965	316552193	158	158	$2.15416	$2.15	.0135	.0135	74.23	64.23
St. Paul Co.....	65762	264403	123033	349018	11028287	44321384	167	167	1.87089	1.32	.0111	.0078	75.96	65.96
Fremont Co.....	158350	846312	336714	1158754	24069200	128425903	152	152	2.12633	1.36	.0139	.0090	80.71	70.71
Union Pacific Co....	192865	1882112	398262	3886531	42970322	419300773	222	222	2.06498	2.06	.0092	.0092	66.44	56.44
Omaha Co.	63999	628351	83335	867291	4659127	45745647	72	72	1.38026	1.38	.0189	.0189	103.12	93.12
St. Joseph Co.....	39657	303550	31004	185391	2005851	15355015	50	50	.78180	.61	.0154	.0120	84.23	7423
Kansas City Co.....	10823	194089	6630	118900	481515	8635016	44	44	.61261	.61	.0137	.0137	85.19	75.19
1905		**Tons carried other than local freight**		**Amount received for other than local freight**										
Vandalia R. R.....	38888	7135369	$91067	$4584674	1127752	630053082	32.85	88.3	2.34	.642	.0713	.0074	26.27	79.73

Columns Nos. 1 and 2 are taken from Ex. 20, Smyth-Ames.

Column No. 3 is taken from Column 3, Exhibit 4, Smyth-Ames case and our column 4 is obtained by deducting Column 3, Exhibit 4 from Column 6, Exhibit 4 Smyth-Ames case.

Column 5 is taken from Ex. 20, Smyth-Ames.

Column 6 is taken from Ex. 20, Smyth-Ames.

Column 7 is ascertained by dividing Column No. 5 by Column No. 1.

Column No. 8 is ascertained by dividing Column No. 6 by Column No. 2.

Column No. 9 is obtained by dividing our Column No. 3 by our Column No. 1 and is the same as Column 2 of Exhibit 4, Smyth-Ames case, except as to the St. Joseph Co. where the error in making the computation is manifest on the face of the exhibit.

Column No. 10 is ascertained by dividing Column No. 4 by Column No. 2 of our table.

Column No. 11 is ascertained by dividing Column No. 3 by Column No. 5 of our table.

Column No. 12 is ascertained by dividing Column No. 4 by Column No. 6 of our table.

Column No. 13 is taken from the table given on p. 536 Column No. 3, Smyth-Ames.

Column No. 14 is taken from the table given on p. 536 Column No. 1, Smyth-Ames.

IN THE MATTER OF THE VANDALIA TABULATION.

Column No. 1 is taken from Tables B, (p. 21), C, (p. 23) and G, (p. 31) of this brief.

Column No. 2 is ascertained by deducting the number

of tons of local freight from the number of tons of freight carried. (Rec. p. 203, Ex. 6.)

Column No. 3 is taken from Tables B, (p. 21), C, (p. 23) and G, (p. 31) of this brief.

Column No. 4 is ascertained by deducting Column No. 3 from freight earnings reported (Rec. p. 203, Ex. 6).

Column No. 5 is ascertained by multiplying Column No. 1 by Column No. 7.

Column No. 6 is ascertained by multiplying Column No. 2 by Column No. 8.

Column No. 7 is taken from Tables B, (p. 21), C, (p. 23) and G, (p. 31) of this brief.

Column No. 8 is taken from Rec. p. 203, Ex. 6.

Column No. 9 is taken from Tables B, (p. 21), C, (p. 23) and G, (p. 31) of this brief.

Column No. 10 is taken from Rec. p. 203, Ex. 6.

Column No. 11 is ascertained by dividing Column No. 3 by Column No. 5 of this statement.

Column No. 12 is ascertained by dividing Column No. 4 by Column No. 6, or, taken from Rec. p. 203, Ex. 4.

Column No. 13 is taken from statement on page 78 of this brief.

Column No. 14 is ascertained by dividing the revenue per ton per mile into the cost per ton per mile. (Rec. p. 203, Ex. 6.)

The striking feature of this detailed statement is that the Nebraska roads carried local freight and through freight the same number of miles and, with three exceptions, at the same revenue per ton; whereas, in the case of the Vandalia the average haul of local was 32.85 miles as against 88.3 miles for through, and the average revenue per ton, regardless of haul, was $2.34 for local as against 64.2 cents for other freight. This shows a haul more than

2½ times the length for through and only one-fourth the revenue for through that appellee secured from local freight, and the difference is correctly indicated in Columns Nos. 12 and 13 by a revenue of 7.13 cents per ton per mile from local freight and a revenue of 74-100 of a cent per ton per mile from through freight, the local freight showing a revnue per ton per mile of about 9½ times that derived from through freight; and yet appellee seeks to apply the same ratio of expense, to earnings to local as it does to general business.

This necessarily was done in the Nebraska case, as the revenue per ton and distance of haul for through and local being identical, the percentage of expense to earnings of local could not be lower than the general average.

Now after so long and tedious process of investigation as to facts in the Smyth-Ames case as compared with the facts in this case, these appellants feel that they have fully established their proposition that the evidence in this cause did not justify the Master in this case in finding that the ratios of expense of carrying the classified freight to the earnings derived from that source, were the respective per cents which he applied to the classified freight involved in this case, resulting in the figures which he set down as "the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission."

And that there is nothing in the case of *Smyth v. Ames*, 169 U. S., 176, which sustains his action in so doing. As fully shown herein, the facts are so entirely dissimilar in this case, from those in that case, that the language of that decision, while altogether proper there, can have no reasonable application here.

These appellants have some hesitancy in presenting the

next proposition lest it might be taken as an implication that they have some doubt as to the validity of the argument heretofore made, and which will hereafter be summarized, to the effect that they have demonstrated that the rates for the classified freight prescribed by the Commission would actually produce a large profit. For themselves they feel no doubt as to the completeness of this demonstration. They have concluded, however, to advance the next suggestion as a wholly independent basis on which the decree heretofore entered must be reversed.

But before leaving that case, there is another point there decided, which perhaps needs consideration in this case.

In that case the court said:

"In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a state for the transportation of persons and property wholly within its limit, must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its intertsate business, over which so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear losses on the interstate business, nor the latter losses on domestic business. It is only rates for the transportation of persons and property between points within the state that the state can prescribe; and when it undertakes to prescribe rates not to

be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable as between the carrier and the public, in respect to domestic business. The argument that a railroad is an entirety; that its income goes into, and its expenses are provided for out of a common fund; and that its capitalization is on its entire line, within and without the state, can have no application where the state is without authority over rates on the entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business."

All of which is admirably put, and plainly stated. But there is an implication in this statement.

The general rule undoubtedly is that the power of the state to prescribe rates for transportation of freight, or for any other services to be rendered, is not the "power" to destroy or a power to compel the doing of services without reward, or to take private property for a public use without just compensation or without due process of law.

Budd v. New York, 143 U. S. 517 at p. 547.

And that the power of the state to prescribe rates, is "subject to the limitation that the carriage is not required without reward, or upon conditions amounting to the taking of property for public use without just compensation."

Georgia R. R. & Banking Co. v. Smith, 128 U. S. 174.

And just and reasonable compensation, must not only cover the actual and immediate cost of the service, but something over and above such sum as a return upon the capital invested; as to the latter item, viz: the return upon the capital invested, some discretion is left

with the state, in analogy to the power of the state, to pass laws prescribing the rate of interest. But this does not mean that a state may not in any instance require a railroad company to perform any service for which it receives no compensation, or in which it may sustain a loss, or which requires the expenditure of a sum of money on which it receives no return. If such a service is an incident to general operations of its road, such service may be required without any specific compensation being made.

And here our proposition is this, the case for appellee is not made out, even if it has established—which these appellants deny—that the classified freight carried under order could only be carried at a loss. It must go further and show—the burden of proof is upon it to show, that the entire business of its transportation of all persons, freight and commodities, where such business is domestic or infra state, under the rates prescribed by the state, can not as a total, including the classified freight covered by the order of the Commission, be transacted at a fair profit.

In the case of *Minneapolis, etc. R. R. Co. v. Minnesota*, 186 U. S. p. 257, on p. 267, this court, as pertinent to the point now suggested, said:

"Nothwithstanding the evidence of the defendant that, if the rates upon *all* merchandise were fixed at the amount imposed by the Commission upon coal in car load lots, the road would not pay operating expenses, it may well be that the existing rates upon other merchandise, which are not disturbed by the Commission, may be sufficient to earn a large profit to the company, though it may earn little or nothing upon coal in car load lots."

In the same case it is further said on page 268:

"The very fact that the Commission, while fixing the

rate to Boyd at $2.48, within two cents of the amount theretofore charged by the companies themselves, gradually reduced that rate in proportion to the mileage, to Norwood, where it was fixed at $1.57, while the company charged an arbitrary rate of $2.50 to Norwood, and to all the stations between Norwood and Boyd, tends, at least, to show that the rates were fixed upon a more reasonable principle than that applied by the companies.

In exercising its power of supervising such rates the Commission is not bound to reduce the rates upon all classes of freight, which may perhaps be reasonable, except as applied to a particular article; and if, upon examining the tariffs of a certain road, the Commission is of opinion that the rate upon a particular article, or class of freight, is disproportionately or unreasonably high, it may reduce such rate, notwithstanding that it may be impossible for the company to determine with mathematical accuracy the cost of transportation of that particular article as distinguished from all others. Obviously such a reduction could not be shown to be unreasonable simply by proving that, if applied to all classes of freight, it would result in an unreasonably low rate."

In *Atlantic Coast Line v. N. Car. Corp. Commission*, 206 U. S. p. 1, it was held, that a railroad company might be required to put on an extra passenger train, to run daily between two points, to accommodate the public, even though such train would be run at a loss.

It is true that, the case cited was not a rate case, as is stated by the court; and that case is distinguished from the Smyth-Ames case, showing that it was not in conflict therewith. But the court says:

"But even if the rate applicable to an entire rate scheme were to be here applied, as the findings made below as to

the net earnings, constrain us to conclude that adequate remuneration would result from the general operation of the rates in force, even allowing for any loss occasioned by the running of the extra train in question, it follows that the order would not be unreasonable, even if tested by the doctrine announced in *Smyth v. Ames* and kindred cases."

In this case these appellants think that this court might to sustain the order complained of well assume that the Railroad Commission considered the rates which the appellee were authorized under orders made by it, or permitted in the absence of such orders to charge for its service under general laws, and came to the conclusion that it could conduct all its domestic infra state business at a reasonable profit, under the rates by it established for the six classes of classified freight.

Beyond this, under the principles set forth in the case of *Smyth v. Ames*, the expenses and earnings arising out of the conduct of the infra state business are to be contrasted alone, without reference to the expenses and earnings of the interstate business. But not only was this not done, but appellee declares, that with the data at hand under its method of keeping is accounts, that it was impossible to do it. The expenses and earnings of all its business, passenger, express, mail and freight, interstate and infra state, are all thrown into one mass. Not only could the appellee not, or at least did not, separate these items arising out of the conduct of all its business, separate freight expenses and earnings, from the other classes of its business, or domestic from interstate, or the classified freight from other freight carried in the State of Indiana, but it declares that it was impossible for it to do so. This simply demonstrates, that the appellee

was not in a situation in which it could maintain the burden cast upon it of clearly establishing that the rates prescribed by the Railroad Commission for carrying the classified freight were unreasonable. The appellee contented itself, with saying that the carrying of the classified domestic freight was more expensive than through freight, without taking into the reckoning that the rates prescribed for carrying the local freight, were very much higher than those charged by it for carrying through freight. And by saying that if all freights were carried as local freight, the expense would exceed earnings, without taking into account that if all freight were carried at the rates prescribed by the Commission, the profits for carrying the same would have been enormous.

The case of *Milwaukee, etc., R. R. Co. v. Tompkins*, 176 U. S. 167, does not justify the process of the Master in this case. It is true that it was there said:

"But here we are confronted by the ninth statement in the findings of fact, to-wit: 'That the court is unable to find from the testimony what the actual cost of earning the local earnings for the fiscal years ending June 30, 1894, 1895, 1896 and 1897 was.' If the court meant by that to say that there was no testimony tending to show what was the cost of doing local business, we are constrained to say that the statement is erroneous, because there was abundance of testimony bearing upon that question. If it meant simply that it would not determine that fact with mathematical accuracy, basing it upon testimony of the exact amount of money paid out for doing such work, it is undoubtedly true, but there are many things that have to be determined by the court and jury in respect to which mathematical accuracy is not possible. * * * Beyond the figures given from the books of the company of the actual cost of doing the total business of the company, there was the testimony of several experts as to the relative cost of doing local and through business. Such testimony is not to be disregarded simply because it cannot demonstrate by figures the exact amount or per cent of the extra cost.

It is obvious on a little reflection that the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy." All of which is certainly true.

But that is not the real point of the decision. In that case, the Master simply reported the evidence to the court without any findings of fact or conclusions of law.

"The court proceeded upon the theory that a comparison of the actual gross receipts of the company from its South Dakota local business with those which it would have received if the rates prescribed by the defendants had been in force was sufficient to determine the question of the reasonableness of these latter rates, and instituted such comparison with respect to the four years preceding the commencement of this suit. Now, it is obvious that the amount of gross receipts from any business does not of itself determine whether such business is profitable or not. The question of expenses incurred in producing those receipts must be always taken into account, and only by striking the balance between the two can it be determined that the business is profitable. The gross receipts may be large, but if the expenses are larger surely the business is not profitable."

Recasting the last sentence so as to read: "The gross expenses may be large, but if the earnings are larger, surely the business is profitable," and it would be as certainly true as the sentence used by the court.

Of this process the court say: "We are also of the opinion that the process by which the court came to its conclusion is not one that can be relied upon."

The court reversed the cause, with the mandate hereinbefore copied in this brief on another point.

Now, if this cause means anything, it is this, that the Master and the trial court, are not to jump to hasty conclusions, by general impressions, which at first blush might seem to be applicable. But that the Master and the trial court, must carefully and patiently consider and study the details of the evidence, analyze it, and find the

details of the facts, and see whether the first impression is sound.

It is very true, as said by the court in that case, speaking by Mr. Justice Brewer:

"Few cases are more difficult or perplexing than those which involve an inquiry whether the rates prescribed by a state legislature for its carriage of passengers and freight are unreasonable. And yet this difficulty affords no excuse for a failure to examine and solve the questions involved."

At pages 179-80:

"We think this is one of those cases in which it is especially important that there should be a *full and clear* finding of the facts by the trial court. The questions are difficult, the interests are vast, and therefore the aid of the trial court should be had. The writer of this opinion appreciates the difficulties which attend a trial court in a case like this. In *Smyth v. Ames, supra*, a similar case, he, as circuit judge presiding in the Circuit Court of Nebraska, undertook the work of examining the testimony, making computations and finding the facts. It was very laborious, and took several weeks. It was a work which really ought to have been done by a master."

If the Master in this cause had pursued such a course, these appellants feel that he could have never come to the conclusion which he did; and certainly if he did, his findings would have enabled this court to judge and determine whether such conclusions were correct.

These appellants, however, are not contented to rest their argument on the proposition that the Maser's finding is not justified upon the evidence. They are prepared to go further and demonstrate that the evidence, when carefully and patiently analyzed, considered and applied, requires a positive and direct finding that the rates prescribed by the Commission are remunerative.

For reasons already hereinbefore deduced and stated, we take two cents per hundred weight or forty cents per ton as the cost of handling freight over the platform.

The evidence shows (Rec. p. 125) that the statement submitted by witness Saur included the cost of handling of all cars over the tracks in the Indianapolis Terminal Division, and between the station and the yards, which are 1½ miles away from the station. (Rec. p. 104.) The evidence also shows (Rec. p. 123) that the expense at Terre Haute was about the same as that at Indianapolis and that there was not a material difference in the expense at East St. Louis. Having ascertained the average expense of handling platform freight and the average expense of handling cars at Indianapolis, with the same expense for delivering station, we can, by taking these expenses at the receiving and delivering stations and computing the cost of hauling, determine whether the rates prescribed by the Railroad Commission of Indiana were confiscatory or profitable.

Witness Roney (Rec. p. 93) testified that, speaking from his knowledge, he would say there was no difference in cost of transporting freight per ton per mile of a given class in Illinois and transportation of the same freight per ton per mile in Indiana, and general knowledge of the topography of and conditions in those states would not justify suspicion of the accuracy of this statement. Therefore, the cost per ton per mile given in the annual statement (Rec. p. 203, Ex. 6) must be the same in both states; certainly, if it is not, appellee has failed to submit any evidence that proves a different cost and has failed to dispute the accuracy of the cost named.

The cost per ton per mile (Rec. p. 203) is 59-100 of a cent. This naturally includes the platform expense and it is fair to presume that if that is taken as a basis of *cost for hauling only*, in addition to the platform expense hereinbefore referred to, no injustice would be done appellee. But witness Downing (Rec. p. 118) has testified

that the expense would have been increased 14.6% if all had been handled as local freight and we will for the purpose of our computation increase the cost per ton per mile of .59 of a cent, 14.6%, and use as a cost for *hauling only* .68 of a cent per ton per mile, or .034 of a cent per hundred weight per mile. By multiplying the miles of distance to any station we will have the cost of hauling 100 pounds to that station.

As already stated and for the reasons stated, these appellants have adopted two cents per ton as the cost of handling freight across the platform at Indianapolis; we think it quite conceded and apparent, that the cost of handling freight across the platform at way stations is less than at the terminals, and it is certainly not shown that it is more, and therefore the appellee can not be harmed by reckoning the same upon that basis.

The result is shown as to the first four classes by the following table:

TABLE O.

A comparison of cost per hundred weight of local freight handled over the platform and rates prescribed by the Railroad Commission of Indiana at each station upon the road from Indianapolis to the west line of the state.

STATIONS	MILES	CLASSES			
		1	2	3	4
Ben Davis	6				
Platform Expense					
Receiving Station		2	2	2	2
Ex. Haul.....		0.204	0.204	0.204	0.204
Ex. Del. Sta.....		2	2	2	2
Total cost		4.204	4.204	4.204	4.204
Comm. rates		8	7	6.5	5
Bridgeport	9				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.306	0.306	0.306	0.306
Ex. Del. Sta.....		2	2	2	2
Total cost		4.306	4.306	4.306	4.306
Comm. rates		8.5	7.5	7	5
Oakplain	11				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.374	0.374	0.374	0.374
Ex. Del. Sta.....		2	2	2	2
Total cost		4.374	4.374	4.374	4.374
Comm. rates		8.5	7.5	7	5

STATIONS	MILES	CLASSES			
		1	2	3	4
Plainfield	14				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.476	0.476	0.476	0.476
Ex. Del. Sta.....		2	2	2	2
Total cost		4.476	4.476	4.476	4.476
Comm. rates		9	8	7	5.5

Gibson	15				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.51	0.51	0.51	0.51
Ex. Del. Sta.....		2	2	2	2
Total cost		4.51	4.51	4.51	4.51
Comm. rates		9	8	7	5.5
Cartersburg	17				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.578	0.578	0.578	0.578
Ex. Del. Sta.....		2	2	2	2
Total cost		4.578	4.578	4.578	4.578
Comm. rates		9.5	8.5	7.5	5.5
Clayton	20				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.68	0.68	0.68	0.68
Ex. Del. Sta.....		2	2	2	2
Total cost		4.68	4.68	4.68	4.68
Comm. rates		9.5	8.5	7.5	5.5
Pecksburg	23				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.782	0.782	0.782	0.782
Ex. Del. Sta.....		2	2	2	2
Total cost		4.782	4.782	4.782	4.782
Comm. rates		10.5	9.5	8.5	6.5
Amo	25				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.85	0.85	0.85	0.85
Ex. Del. Sta.....		2	2	2	2
Total cost		4.85	4.85	4.85	4.85
Comm. rates		10.5	9.5	8.5	6.5
Coatsville	28				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		0.952	0.952	0.952	0.952
Ex. Del. Sta.....		2	2	2	2
Total cost		4.952	4.952	4.952	4.952
Comm. rates		11	10	9	6.5

STATIONS	MILES	CLASSES			
		1	2	3	4
Fillmore	33				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.122	1.122	1.122	1.122
Ex. Del. Sta.....		2	2	2	2
Total cost		5.122	5.122	5.122	5.122
Comm. rates		11.5	10.5	9	7
Alemeda	36				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.224	1.224	1.224	1.224
Ex. Del. Sta.....		2	2	2	2
Total cost		5.224	5.224	5.224	5.224
Comm. rates		12	11	9.5	7
Greencastle	39				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.236	1.326	1.326	1.326
Ex. Del. Sta.....		2	2	2	2
Total cost		5.326	5.326	5.326	5.326
Comm. rates		12	11	9.5	7
Limedale	40				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.36	1.36	1.36	1.36
Ex. Del. Sta.....		2	2	2	2
Total cost		5.36	5.36	5.36	5.36
Comm. rates		12	11	9.5	7
Hamrick	44				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.496	1.496	1.496	1.496
Ex. Del. Sta.....		2	2	2	2
Total cost		5.496	5.496	5.496	5.496
Comm. rates		13	12	10.5	8
Reelsville	47				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.598	1.598	1.598	1.598
Ex. Del. Sta.....		2	2	2	2
Total cost		5.598	5.598	5.598	5.598
Comm. rates		13.5	12	11	8

Eagles	50				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.7	1.7	1.7	1.7
Ex. Del. Sta.....		2	2	2	2
Total cost		5.7	5.7	5.7	5.7
Comm. rates		13.5	12	11	8
STATIONS	MILES		CLASSES		
		1	2	3	4
Harmony	54				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.836	1.836	1.836	1.836
Ex. Del. Sta.....		2	2	2	2
Total cost		5.836	5.836	5.836	5.836
Comm. rates		14	12.5	11	8.5
Knightsville	55				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.87	1.87	1.87	1.87
Ex. Del. Sta.....		2	2	2	2
Total cost		5.87	5.87	5.87	5.87
Comm. rates		14	12.5	11	8.5
Brazil	57				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		1.938	1.938	1.938	1.938
Ex. Del. Sta.....		2	2	2	2
Total cost		5.938	5.938	5.938	5.938
Comm. rates		14.5	13	11.5	8.5
Turner ..	59				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		2.006	2.006	2.006	2.006
Ex. Del. Sta.....		2	2	2	2
Total cost		6.006	6.006	6.006	6.006
Comm. rates		14.5	13	11.5	8.5
Staunton	61				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		2.074	2.074	2.074	2.074
Ex. Del. Sta.....		2	2	2	2
Total cost		6.074	6.074	6.074	6.074
Comm. rates		14.5	13	11.5	8.5

Cloverland 62				
Ex. Rec. Sta.....	2	2	2	2
Ex. Haul	2.108	2.108	2.108	2.108
Ex. Del. Sta.....	2	2	2	2
Total cost	6.108	6.108	6.108	6.108
Comm. rates	15.5	14	12.5	9.5
Seeleyville 65				
Ex. Rec. Sta.....	2	2	2	2
Ex. Haul	2.21	2.21	2.21	2.21
Ex. Del. Sta.....	2	2	2	2
Total cost	6.21	6.21	6.21	6.21
Comm. rates	15.5	14	12.5	9.5

STATIONS MILES	CLASSES			
	1	2	3	4
Prairie 71				
Ex. Rec. Sta.....	2	2	2	2
Ex. Haul	2.414	2.414	2.414	2.414
Ex. Del. Sta.....	2	2	2	2
Total cost	6.414	6.414	6.414	6.414
Comm. rates	16	14.5	13	9.5
Terre Haute 73				
Ex. Rec. Sta.....	2	2	2	2
Ex. Haul	2.482	2.482	2.482	2.482
Ex. Del. Sta.....	2	2	2	2
Total cost	6.482	6.482	6.482	6.482
Comm. rates	16.5	15	13	10
Macksville 75				
Ex. Rec. Sta.....	2	2	2	2
Ex. Haul	2.55	2.55	2.55	2.55
Ex. Del. Sta.....	2	2	2	2
Total cost	6.55	6.55	6.55	6.55
Comm. rates	16.5	15	13	10

Liggett	77				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		2.618	2.618	2.618	2.618
Ex. Del. Sta.....		2	2	2	2
Total cost		6.618	6.618	6.618	6.618
Comm. rates		17	15.5	13.5	10
Nelson	79				
Ex. Rec. Sta.....		2	2	2	2
Ex. Haul		2.686	2.686	2.686	2.686
Ex. Del. Sta.....		2	2	2	2
Total cost		6.686	6.686	6.686	6.686
Comm. rates		17	15.5	13.5	10

There is this difference between the first four classes, and classes five and six, that the last two named classes are car load lots and are loaded and unloaded by the consignors and consignees respectively, and thus the labor and services of the employes of the railroad company in the actual loading and unloading of these classes is excluded, and we have already shown that the cost of handling the loaded car (see Table Q, p. 74, this brief), excluding these services, is 83 cents per car; but it is clear that part of the expense of the platform force, which includes checkmen, and part of the station supplies and taxes, the three items aggregating $14587.46, should be charged to the expense of handling the 134474 cars other than freight house cars, and we allow 7 cents per car, or $9,413.18 to cover these items, and treat the cost as 90 cents per car, and the hauling as the .034 cents per ton per mile. The average car load weight as shown by Exhibit 6, (Record p. 203) is 17.77 tons or 35540 pounds, which would make the cost of hauling per car per mile 12.09 cents. So these appellants submit the following:

TABLE P.

Table showing the cost of handling classified freight in classes 5 and 6 to and from each station on the line of the Vandalia Railroad from Indianapolis to the State line upon the west and the reverse.

Station	Mileage		Classes 5th	Classes 6th
Ben Davis	6	Exp. Rec. Station	.90	.90
		Exp. of Haul	.73	.73
		Exp. Del. Sta.	.90	.90
		Total Cost .....$	2.53	$ 2.53
		Revenue per carload at Commission's Rates	12.44	8.89
		Cost per Cwt.	.0071	.0071
		Commission's rates per Cwt.	.035	.025
Bridgeport	9	Exp. Rec. Sta.	.90	.90
		Expense of Haul	1.09	1.09
		Expense of Del. Sta. ..	.90	.90
		Total Cost	2.89	2.89
		Revenue per carload at Commission's rates ..	14.22	10.66
		Cost per Cwt.	.0081	.0081
		Commission's rates per Cwt.	.04	.03
Oak Plain	11	Exp. Rec. Station ..	.90.	.90
		Exp. of Haul	1.33	1.33
		Exp. of Del. Sta.	.90	.90
		Total Cost	3.13	3.13
		Revenue per car load at Commission's rates	14.22	10.66
		Cost per Cwt.	.0088	.0088
		Commission rates per Cwt.	.04	.03

Station	Mileage		Classes 5th	6th
Plainfield	14	Exp. Rec. Sta.	.90	.90
		Exp. of Haul	1.69	1.69
		Expense of Del. Sta. ..	.90	.90
		Total Cost	3.49	3.49
		Revenue per carload at Commission's rates	14.22	10.66
		Cost per Cwt.	.0098	.0098
		Commission rates per Cwt.	.04	.03
Gibson	15	Exp. Rec. Sta.	.90	.90
		Expense of Haul	1.81	1.81
		Exp. Del. Sta.	.90	.90
		Total Cost	3.61	3.61
		Revenue per car load at Commission's rates	14.22	10.66
		Cost per Cwt.	0101	.0101
		Commission rates per Cwt.	.04	.03
Cartersburg	17	Exp. Rec. Sta.	.90	.90
		Expense of Haul	2.05	2.05
		Exp. Del. Sta.	.90	.90
		Total Cost	3.85	3.85
		Revenue per car load at Commission's rates	15.99	10.66
		Cost per Cwt.	.0108	.0108
		Commission rates per Cwt.	.045	.03
Clayton	20	Exp. Rec. Sta.	.90	.90
		Exp. of Haul	2.42	2.42
		Exp. Del.	.90	.90
		Total Cost	4.22	4.22
		Revenue per car load at Commission's rates	15.99	10.66
		Cost per Cwt.	.0118	.0118
		Commission's rates per Cwt.	.045	.03

Station	Mileage		Classes 5th	6th
Pecksburg	23	Exp. Rec. Sta.	.90	.90
		Expense of Haul	2.78	2.78
		Exp. Del. Sta.	.90	.90
		Total Cost	4.58	4.58
		Revenue per carload at Commission's rates	15.99	12.44
		Cost per Cwt	.0129	.0129
		Commission's rates per Cwt	.045	.035
Amo	25	Exp. Rec. Station	.90	.90
		Expense of Haul	3.02	3.02
		Exp. Del. Sta.	.90	.90
		Total Cost	4.82	4.82
		Revenue per carload at Commission's rates	15.99	12.44
		Cost per Cwt	.0135	.0135
		Commission's rates per Cwt.	.045	.035
Coatsville	28	Exp. Rec. Station ...	.90	.90
		Expense of Haul	3.38	3.38
		Exp. Del. Sta.	.90	.90
		Total Cost	5.18	5.18
		Revenue per carload at Commission's rates	17.77	12.44
		Cost per Cwt	.0146	.0146
		Commission's rates per Cwt.	.05	.035
Filmore	33	Exp. Rec. Station	.90	.90
		Expense of Haul	3.99	3.99
		Exp. Del. Sta.	.90	.90
		Total Cost	5.79	5.79
		Revenue per carload at Commission's rates	17.77	14.22
		Cost Per Cwt.	.0163	.0163
		Commission's rates per Cwt.	.05	.04

Station	Mileage		Classes 5th	6th
Almeda	36	Exp. Rec. Sta.	.90	.90
		Expense of Haul	4.35	4.35
		Exp. Del. Sta.	.90	.90
		Total Cost	6.15	6.15
		Revenue per carload at Commission's rates	19.55	14.22
		Cost per Cwt.	.0173	.0173
		Commission's rates per Cwt.	.055	.04
Greencastle	39	Exp. Rec. Sta.	.90	.90
		Expense of Haul	4.71	4.71
		Exp. Del. Sta.	.90	.90
		Total Cost	6.51	6.51
		Revenue per carload at Commission's rates	19.55	14.22
		Cost per Cwt.	.0183	.0183
		Commission's rates per Cwt.	.055	.04
Limedale	40	Exp. Rec. Sta.	.90	.90
		Expense of Haul	4.83	4.83
		Exp. Del. Sta.	.90	.90
		Total Cost	6.63	6.63
		Revenue per carload at Commission's rates	19.55	14.22
		Cost per Cwt.	.0186	.0186
		Commission's rates per Cwt.	.055	.04
Hamrick	44	Exp. Rec. Sta.	.90	.90
		Expense of Haul	5.32	5.32
		Exp. Del. Sta.	.90	.90
		Total Cost	7.12	7.12
		Revenue per carload at Commission's rates	21.32	15.99
		Cost per Cwt.	.0200	.0200
		Commission's rates per Cwt.	.06	.045

Station	Mileage		Classes 5th	6th
Reelsville	47	Exp. Rec. Sta.	.90	.90
		Expense of Haul	5.68	5.68
		Exp. Del. Sta.	.90	.90
		Total Cost	7.48	7.48
		Revenue per carload at Commission's rates	21.32	15.99
		Cost per Cwt.	.0210	.0210
		Commission's rates per Cwt.	.06	.045
Eagles	50	Exp. Rec. Sta.	.90	.90
		Expense of Haul	6.04	6.04
		Exp. Del. Sta.	.90	.90
		Total Cost	7.84	7.84
		Revenue per carload at Commission's rates	21.32	15.99
		Cost per Cwt.	.0220	.0220
		Commission's rates per Cwt.	.06	.045
Harmony	54	Exp.Rec. Sta.	.90	.90
		Exp. of Haul	6.52	6.52
		Exp. Del. Sta.	.90	.90
		Total Cost	8.32	8.32
		Revenue per carload at Commission's rates	23.10	15.99
		Cost per Cwt.	.0234	.0234
		Commission's rates per Cwt.	.065	.045
Knightsville	55	Exp. Rec. Sta.	.90	.90
		Expense of Haul	6.64	6.64
		Exp. Del. Sta.	.90	.90
		Total Cost	8.44	8.44
		Revenue per carload at Commission's rates	23.10	15.99
		Cost per Cwt.	.0237	.0237
		Commission's rates per Cwt.	.065	.045

Station	Mileage		Classes 5th	6th
Brazil	57	Exp. Rec. Sta.	.90	.90
		Expense of Haul	6.89	6.89
		Exp. Del. Sta.	.90	.90
		Total Cost	8.69	8.69
		Revenue per carload at Commission's rates	23.10	17.77
		Cost per Cwt.	.0244	.0244
		Commission's rates per Cwt.	.065	.05
Turner	59	Exp. Rec. Sta.	.90	.90
		Expense of Haul	7.13	7.13
		Exp. Del. Sta.	.90	.90
		Total Cost	8.93	8.93
		Revenue per carload at Commission's rates	23.10	17.77
		Cost per Cwt.	.0251	.0251
		Commission's rates per Cwt.	.065	.05
Staunton	61	Exp. Rec. Sta.	.90	.90
		Expense of Haul	7.37	7.37
		Exp. Del. Sta.	.90	.90
		Total Cost	9.17	9.17
		Revenue per carload at Commission's rates	23.10	17.77
		Cost per Cwt.	.0258	.0258
		Commission's rates per Cwt.	.065	.05
Cloverland	62	Exp. Rec. Sta.	.90	.90
		Expense of Haul	7.49	7.49
		Exp. Del. Sta.	.90	.90
		Total Cost	9.29	9.29
		Revenue per carload at Commission's rates	24.88	17.77
		Cost per Cwt.	.0261	.0261
		Commission's rates per Cwt.	.07	.05

Station	Mileage		Classes 5th	6th
Seeleyville	65	Exp. Rec. Sta.	.90	.90
		Expense of Haul	7.85	7.85
		Exp. Del. Sta.	.90	.90
		Total cost	9.65	9.65
		Revenue per carload at Commission's rates	24.88	17.77
		Cost per Cwt.	.0271	.0271
		Commission's rates per Cwt.	.07	.05
Prairie	71	Exp. Rec. Sta.	.90	.90
		Expense of Haul	8.57	8.57
		Exp. Del. Sta.	.90	.90
		Total Cost	10.37	10.37
		Revenue per carload at Commission's rates	24.88	19.55
		Cost per Cwt.	.0292	.0292
		Commission's rates per Cwt.	.07	.055
Terre Haute	73	Exp. Rec. Sta.	.90	.90
		Expense of Haul	8.82	8.82
		Exp. Del. Sta.	.90	.90
		Total Cost	10.62	10.62
		Revenue per carload at Commission's rates	26.66	19.55
		Cost per Cwt.	.0299	.0299
		Commission's rates per Cwt.	.075	.055
Mackville	..75	Exp. Rec. Sta.	.90	.90
		Expense of Haul	9.06	9.06
		Exp. Del. Sta.	.90	.90
		Total Cost	10.86	10.86
		Revenue per carload at Commission's rates	26.66	19.55
		Cost per Cwt.	.0305	0305
		Commission's rates per Cwt.	.075	.055

Station	Mileage		Classes 5th	6th
Liggett	77	Exp. Rec. Sta.	.90	.90
		Expense of Haul	9.30	9.30
		Exp. Del. Sta.	.90	.90
		Total Cost	11.10	11.10
		Revenue per carload at Commission's rates	26.66	19.55
		Cost per Cwt.	.0312	.0312
		Commission's rates per Cwt.	.075	.055
Nelson	79	Exp. Rec. Sta.	.90	.90
		Expense of Haul	9.54	9.54
		Exp. Del. Sta.	.90	.90
		Total Cost	11.34	11.34
		Revenue per carload at Commission's rates	26.66	19.55
		Cost per Cwt.	.0319	.0319
		Commission's rates per Cwt.	.075	.055

Two other matters shown by the record are of significance.

First: By the four tables set forth at pages 204-207 of the Record a comparison of the rates of the Vandalia Railroad, (as established by it, and which were reduced by the order of the R. R. Commission complained of) is made with the rates established for corresponding distances on four other lines of R. R. in the State of Indiana, viz:

Pennsylvania Railroad—Louisville Division,
Vandalia Railroad—Vincennes Division,
C. H. & D. Railroad—Indianapolis Division,
Pennsylvania Railroad—Indianapolis to Ohio State line.

This comparison shows that the rates of the appellee for coresponding distances were from 40% to more than 100%

higher than those of the other roads named, including the Vincennes Division of appellee's road.

It is true that Mr. Hodgdon, General Traffic Manager of the lines west of Pittsburg, testified (Rec. p. 190), that "The Vincennes Division was always operated at a loss prior to the consolidation, yes sir; it had to have most of its securities wiped out when it was turned over to the Vandalia." But there is no evidence whatever that this running at a loss was because the rates for carrying the classified freight named were unreasonably low; and there is no necessary inference that such rate was not a fair and reasonable one. The loss might have ocurred from other causes. And there is no evidence as to how much water there was in the securities that were wiped out.

Second: An examination of the (Record pp. 208 and 209) in connection with (Record pages 9 and 10), shows great irregular and unequal advances in class rates to stations between Indianapolis and the Illinois State line in the same class of freight for prospective distances—for example, a charge of two cents for two miles; three cents for two miles; three cents for six miles; two cents for eight miles; two cents for twelve miles; two and one-half cents for seventeen miles, and one-half cent for 22 miles. And that appellee carries sixth class freight to stations 46 miles apart and to intermediate stations without a change of rate. Probably the examination of that table of rates in force on the Vandalia Railroad Company at the time when the Railroad Commission was considering what order it should make, led Mr. Hodgdon to state on his cross-examination at p. 182—"I felt that the rate adjustment question was a ragged one, with inconsistencies which might be open to criticism" and that with other things led him to the conclusion, "That we could

afford to take the chance of what reduction of revenue might come out of a revision "on a basis then approved" by him. And very probably induced the Railroad Commission to establish its schedule of rates in the manner that it did.

A comparison of the revenue per hundred pounds derived by appellee from interstate traffic coming to it from connecting lines (Rec. 210-211), with the rates prescribed by the Railroad Commission discloses the fact that the latter are much higher.

In conclusion these appellants submit the following statement covering the classified freight business of appellee for the year 1905:

Revenue from classified freight (Rec. p. 15 and p. 78)	91,067.56
Expenses 26.27% (See p. 78 of this brief)	23,923.45
Balance	$67,144.11
Reduction which would have resulted had the rates established by the Railroad Commission been enforced (34% Rec. p. 16 and pp. 78-9)	30,988.43
Profit had the Railroad Commission rates been applied	36,155.68

CHARLES W. SMITH,
HENRY H. HORNBROOK,
ALBERT P. SMITH,

Attorneys for Appellants, Gustav A. Schnull, William J. Griffin and George G. Griffin.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 11

WILLIAM J. WOODS ET AL., APPELLANTS,

vs.

VANDALIA RAILROAD COMPANY,
APPELLEE.

ADDENDA TO THE SUPPLEMENTAL BRIEF FOR GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN, AND GEORGE G. GRIFFIN, AND REPLY TO BRIEF OF APPELLEE.

CHARLES W. SMITH,
Attorney for Appellants Named.

HENRY H. HORNBROOK,
ALBERT P. SMITH,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 90.

WILLIAM J. WOOD, JOHN F. McCLURE, FRANK E. PAYNE, CONSTITUTING THE RAILROAD COMMISSION OF INDIANA; GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN, AND GEORGE G. GRIFFIN, APPELLANTS,

vs.

VANDALIA RAILROAD COMPANY, APPELLEE.

ADDENDA TO THE SUPPLEMENTAL BRIEF HERETOFORE FILED BY THE APPELLANTS GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN, AND GEORGE G. GRIFFIN; AND REPLY TO CERTAIN SUGGESTIONS IN THE BRIEF OF THE APPELLEE.

First Addenda to Supplemental Brief.

Corrections.

At page 8: In the sentence "The class rate established by the *Railroad Commission* in force prior to the making of the order," etc., the words

"the Railroad Commission" should be "The Railroad Company."

In Table G, on page 30: "Tons 3888.1635" should be "Tons 38888.1635."

On page 80, in the sentence "The seventh column is taken from table on page 429 Smyth-Ames," etc., should read "from table on page 536 Smyth-Ames," etc.

On page 84: "Column No. 10 is taken from Rec., p. 203, Ex. No. 6," should read, "Column No. 10 ascertained by dividing column No. 4 by column No. 2 of our table."

Second. Reply to certain suggestions made in the brief of the appellee touching the supplemental brief of the individual appellants above named.

1st. Counsel for appellee insist that we were in error in our calculations made on pages 77 and 78 in two particulars.

(*a*) In that we took 14.6 per cent as representing what would have been the increased expense if all freight had been handled as local freight. We took these figures from the testimony of Mr. Downing, Division Superintendent of the St. Louis Division of appellee's railroad (Rec., p. 118):

> "Q. What was the best that we could do? It was to state, was it not, that if all of the freight on the road had been handled on the basis of this increased cost as to local freight, the expenses would have been increased 14 per cent?
>
> "A. Yes, 14.6 per cent."

And at page 114 he defines what he meant by local freight, was "freight handled by local freight trains over the platforms."

Which would include the 1st, 2d, 3d, and 4th classes of the classified freight, affected by the order of the Railroad Commission, and would exclude carload freight which was loaded by the consignor and unloaded by the consignee, where there was no platform expense.

At page 29 of appellee's brief its counsel say:

> "The evidence of Mr. Downing and of Mr. Saur was *not introduced* for the purpose of establishing *how much* this cost of handling the total classified freight *exceeded the cost* of handling through freight, *but simply to show* that the cost was necessarily much greater."

There was a large amount of other evidence introduced to establish the general proposition that the expense of handling local freight was greater than handling through freight. This general proposition is quite apparent and was undisputed.

But in the testimony just quoted, the division superintendent was expressly asked as to the *amount of* such increased cost if all freight had been handled as local freight, and he answered explicitly to the fraction of one-tenth of one per cent. This was certainly *direct and positive* evidence as to the *amount of such increase*, and it was the *only evidence* on that point.

We feel that we are justified in ignoring th criticism of counsel for appellee, and we decli to substitute any other sum as representing th amount of the increased cost of handling loc freight over that of handling through freight.

(*b*) At page 23 of the appellee's brief its cou sel insist that we were in error in making such ca culations, in taking 79.73 as the ratio of expens to earnings.

We arrived at those figures by taking the exa figures set down in Exhibit No. 6, at page 203 the records furnished by appellee to us, for th purpose of being put in evidence. Under suc circumstances we feel we were justified in appl ing those figures as truly showing the ratio of e penses to earnings.

Counsel for appellee insist that we should hav used 88.6 as expressing the "real" ratio of e penses to earnings. Whether these figures thu presented by counsel for appellee are correct, not, we are content to accept and use them.

The the following table would show the resul

TABLE R.

Freight earnings (Rec., p. 203, Ex. 6) at railroad company's established rates		$4,675,741.62
Ratio expenses to earnings claimed by appellee's brief, p. 23	88.6	
Increased cost if all freight had been handled as local freight	14.6	
Percentage of expenses to earnings, if all freight were handled as local freight	103.2	
Expense if all freights were handled on basis of cost of local freight		$4,825,365.35
Average revenue per ton from six classes of classified freight at railroad's rates (Table "C" of appellant's supplementary brief)	$2.34	
Earnings if the 7,174,257 tons (Rec., p. 203) had been carried on average revenue per ton for the 6 classes		16,787,761.38
Dividing expense of $4,825,365.35 by these earnings, will give a percentage of expenses to earnings of		28.74

This is the result of applying the rates established and used by the railroad company.

The following table shows what would be the result if the rates prescribed by the Railroad Commission had been applied:

TABLE S.

Freight earnings (Rec., p. 203, Ex. 6) at railroad company's established rates		$4,675,741.62
Ratio expenses to earnings claimed by appellee (Appellee's brief, p. 23)	88.6	
Increased cost if all freight had been handled as local freight (Rec., p. 118)	14.6	
Percentage of expenses to earnings if all freight were handled as local freight	103.2	
Expense if all freight were handled on basis of cost of local freight		$4,825,365.35
Average revenue per ton from six classes of classified freight at Commission's rates (Table "G" of appellant's supplementary brief)	$1.54	
Earnings if the 7,174,257 tons (Rec., p. 203) had been carried on average revenue per ton for the 6 classes		11,048,355.78
Dividing expense of $4,825,365.35 by these earnings will give a percentage of expenses to earnings of		43.68

Now, we will modify the calculations found on page 111 of the supplemental brief, showing statement of the classified freight business of appellee for the year 1905, by using the modifications required and adopting 28.74 as indicating the ratio of expenses to earnings, instead of 26.27, as formerly used by us on that page, and the result is as follows:

TABLE T.

Revenue from classified freight (Rec., p. 15 and p. 78)	$91,067.56
Expense (see Table R) per cent 28.74	26,172.81
Profit at railroad's rates	64,894.75
Reduction had Commission's rates been in effect, 34 per cent	30,988.43
Profit at Commission's rates	33,906.32

On pages 24 and 25 counsel for appellee have made a very ingenious argument by taking the figures 26.27 for the ratio of expense to earnings, as worked out at pages 77 and 79 of the supplemental brief, and applying those figures to haul of three tons for the distance of one mile, and showing that the cost of handling the same across the platform at the point of shipment and at the point of receiving plus cost of transportation would exceed the amount prescribed by the railroad commission. But this argument is specious and more ingenious than sound.

The figures 26.27 as the ratio of expense to earnings is the average of the whole of the 7,174,257

tons if carried at the average of the rates in effect for the 6 classes of classified freight. In very many cases of particular tons the rates would be higher and in others lower. This would necessarily be so; for the two cents per hundred weight, or 80 cents per ton, for handling across both platforms is constant, whatever may be the length of the haul, and the shorter the haul the higher the ratio of expense to earnings, and the longer the haul the lower such ratio. And counsel have selected a haul not to be anticipated or expected.

There is no rate prescribed for any such haul among the rates prescribed by the Commission. As already shown in Table O of the supplemental brief, heretofore filed by us, there is no rate prescribed that does not show a large profit. The rates stated are from Indianapolis west to various stations, and they would be reciprocal on shipments from west to east.

If Indianapolis is the initial point of the haul the first charge is for the initial distance of 6 miles, and the initial charge is 8 cents to meet the platform expenses at receiving and delivering stations and cost of transportation, with a profit. If Ben Davis or any other intervening station is the initial point of shipment it will take the same initial rate, however short the haul.

It is true that there may be shipments from east to west, or the reverse, between intervening stations as, for instance, from Plainfield to Cartersburg, or the reverse, or from Greencastle to Brazil,

or the reverse. If the distance between such intervening stations be not over 6 miles, the same as the distance from Indianapolis to Ben Davis or reverse, the earnings for that distance would leave a margin for a handsome profit.

At page 17 in appellee's brief we found this sentence:

> "Mr. Saur found that the average load of the cars handled at the Indianapolis freight house during 1905 was 4.6 tons, *and Mr. Downing gave the average load that year in local trains as 11.17 tons, and in through trains 18.38 tons.*"

We do not see that it makes much difference, but in point of fact Mr. Downing was talking about the average number of loaded cars in local and through freight trains, and not the average load of the cars, and testified that in 1905 the average number of loaded cars in local trains was 11.17 and in through trains was 18.38 (Record, p. 105).

Some other minor matters. Counsel for appellee in their brief, at page 22, criticise us for having adopted the ton mile in our calculations, and on page 23 say such a process is absolutely useless. But we find in the case of Smyth-Ames, *supra,* at page 532, in Exhibit No. 20, this precise course was adopted. And in Exhibit 6, Record, page 203, we find precisely the same course was pursued; the freights were reduced to ton miles, and the average earnings per ton per mile in cents and the average cost per ton per mile in cents were set down. But

aside from all this it is but simply reducing the problem to its lowest and simplest terms.

Counsel also assert that the results reached are imaginary and worthless, or are absurd or worthless. We had hoped that the results of our labor would prove of some value and aid to the court. If upon investigation the court shall find them unreliable it will in effect announce its conclusion in the decision, and we abide that event. Particular criticism is made of Table N. The manner in which it was produced is carefully set forth at pages 83 to 85 of the supplemental brief, and the court can determine the value of such table. In Table N we show 64.2 cents as the average amount received for carrying one ton of freight other than local. This was no typographical error, but is the result of dividing column 4 by column No. 2. The error was in the statement of how the amount was ascertained which has been corrected.

The genesis of every table is set out and the methods by which the result is obtained is plainly set forth, and we invite the careful attention of the court to the same.

It is said that the attack is made only upon the rates as to 80 miles of road, out of 658.31 miles, covered by Exhibit No. 6. That is easy of explanation. As shown by the record there were but two divisions of the Vandalia railroad operating out of Indianapolis, viz., the St. Louis division, only 80 miles of which is located in the State of Indiana, and the Vincennes division, the estab-

lished rates on which are shown by the record; and such rates fully explain why the attack is made upon the rates on the 80 miles of the St. Louis division located within the State of Indiana.

At page 19 of appellee's brief counsel state that the testimony of W. S. Roney was to the effect that this undistributed expense was divided between freight and passenger service on the basis of train mileage. This mileage is not given in either of the statements, and while an *estimate* of it might be obtained by taking the amount paid to road engineers and firemen in passenger and freight service, respectively, the result would not be near enough to the actual to be very satisfactory.

What is this statement but a confession that the appellee had not produced evidence to enable its own counsel to give a satisfactory basis for computing the cost or expense of the various services or for distributing the same. Yet the burden of proof is upon appellee to establish that the rates prescribed by the commission are unreasonable.

The brief then states: "There is, however, another approved method of distributing expenses common to both freight and passenger service, and that *is a distribution on the revenue basis.*" So counsel declares. But where is there in the record any evidence to support the statement?

The closing sentence of appellee's brief is:

> "This would place [redacted] unbridled power in the hands of the Commission; for [redacted] by a series of piecemeal attacks all the rate

> schedules of a railroad company could finally be destroyed, regardless of the 14th Amendment, or anything else *that stood in the way of a frenzy for confiscation of railroad property.*"

We cannot conceive it to be possible that this court will for a moment assume that the Railroad Commission of Indiana has done or will do anything out of any such spirit; but this court will presume that the gentlemen composing that Commission will act conscientiously in the performance of their duty, and will presume that the order complained of was made in good faith, with the purpose of protecting the petitioners, Schnull, Griffin and Griffin, and other citizens of the State of Indiana, against unfair, unequal and unjust charges for transportation of freights over so much of the St. Louis division of appellee's railroad as was located in the State of Indiana and within its jurisdiction.

Respectfully submitted,

CHARLES W. SMITH,
Attorney for Appellants Named.

HENRY H. HORNBROOK,
ALBERT P. SMITH,
Of Counsel.

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Argument 24

The Special Master's report shows upon its face that the finding therein, touching material and controlling facts in the cause, is based upon an erroneous view of the law, and that in reality there is no evidence in the cause to support the finding as to such facts 24,

Chicago, Milwaukee & St. Paul Ry. Co. v. Tompkins, 176 U. S. 167 ..... 25, 38

City of Knoxville v. Knoxville Water Co., 212 U. S. 1 25

Minneapolis & St. Louis Ry. Co. v. Minnesota, 186 U. S. 257 25

Smyth v. Ames, 169 U. S. 466 ..... 25, 29

Wilcox et al. v. Consolidated Gas Co., 212 U. S. 19 25

In cases of the character of the one in hand, the ordinary rule, that the findings of the Master and court below are conclusive upon appeal, unless unsupported by the evidence or made under an erroneous view of the law, does not obtain .. 39

City of Knoxville v. Knoxville Water Co., 212 U. S. 1 .. 39

Wilcox et al. v. Consolidated Gas Co., 212 U. S. 19 39

There is no evidence in the cause that supports or tends to support the proposition that the rates prescribed in the order of the Railroad Commission in question, if enforced, would be confiscatory, unreasonable or unjust. The evidence, on the other hand, tends to show and does show the contrary .. 39

IN THE

Supreme Court of the United States

OCTOBER TERM, 1911.

No. 335.

WILLIAM J. WOOD, JOHN F. MCCLURE, FRANK E. PAYNE, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN AND GEORGE G. GRIFFIN, *Appellants*,

v.

VANDALIA RAILROAD COMPANY, *Appellee*.

Appeal from the Circuit Court of the United States for the District of Indiana.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from a decree of the Circuit Court of the United States for the District of Indiana, enjoining the defendants in the suit, their successors in office, and all other persons similarly situate, from enforcing or attempting to enforce an

order of the Railroad Commission of Indiana touching maximum rates for carrying certain classes of intrastate freight on appellee's line of railroad.

The complainant was the Vandalia Railroad Company, appellee herein.

The defendants were Union B. Hunt, William J. Wood, Charles V. McAdams, James Bingham, Elliott R. Hooton, Gustav A. Schnull, William J. Griffin and George G. Griffin.

The defendants in the suit, Union B. Hunt and Charles V. McAdams, were made parties defendant (as the complaint shows) because at the time the suit was commenced they were members of the Indiana Railroad Commission; at the time this appeal was prayed they had been succeeded in office by appellants John F. McClure and Frank E. Payne, respectively, who, upon proper application were by the court substituted and allowed to join in the appeal. (Rec., p. 48.)

The defendants Hunt and McAdams, as well as the defendants James Bingham and Elliott R. Hooton, were served with notice and requested to join in the appeal, but declined (Rec., p. 43); upon which fact being shown to the court an order of severance was granted and the appeal allowed by the substituted and original parties defendant other than those so declining, to wit, by Wood, McClure, Payne, Schnull, Griffin and Griffin. (Rec., p. 48, *et seq.*)

To the complainant's bill all the defendants filed a several answer (Rec., p. 7); to which answer com-

plainant filed the general replication. (Rec., p. 12, *et seq.*)

The complainant's bill was filed on the 22d day of January, 1907 (Rec., p. 1), and contains among other allegations substantially the following averments of facts, which are admitted in the answer (Rec., p. 1; p. 7).

The complainant is a consolidated corporation under the laws of the States of Indiana and Illinois and a citizen of the State of Indiana; each of the defendants is a citizen of the State of Indiana; for more than two years last past the complainant has been and is now in possession of and operating a line of railroad from the city of Indianapolis, Indiana, through the counties of Marion, Hendricks, Putnam, Clay and Vigo in said State, and the cities of Greencastle, Brazil and Terre Haute in said State to the line dividing the States of Indiana and Illinois; that the defendants Union B. Hunt, William J. Wood, and Charles V. McAdams are the duly qualified and acting members of the Railroad Commission of Indiana; that defendant James Bingham is Attorney-General of said State, and defendant Elliott R. Hooton is prosecuting attorney of Marion County, in said State; that defendants Gustav A. Schnull, William J. Griffin and George G. Griffin are the parties who, under the firm name of Schnull & Company, instituted the proceedings before the Railroad Commission of Indiana in which the order of that Commission in question in this

case was made; that on the 14th day of December, 1906, and for more than two years prior thereto, complaintant had been engaged as a common carrier in the business, among other things, of transporting freight between said city of Indianapolis and the line dividing the States of Indiana and Illinois, and for the purpose of establishing its rates of charges for transporting and handling such freight had divided the same into six classes, numbered respectively first, second, third, fourth, fifth, and sixth, and had fixed and was charging for the handling and transportation of such freight the following charges:

"Between Indianapolis and the Following Stations. Rates in Cents Per Hundred Pounds.

	Classes.					
	1	*2*	*3*	*4*	*5*	*6*
Ben Davis	10	9	8	7	5	4
Bridgeport	12	11	10	8	6	5
Gibson	15	13	11	9	6.5	5.5
Clayton	18	15	12	10	7	6
Coatesville	20	18	14.5	11	8	7
Limedale	22	20	17	12	9	8
Brazil	24.5	22	19.5	12.5	9	8
Nelson	25	22	19.5	12.5	9.5	8"

That in August, 1905, the defendants, Gustav A. Schnull, William J. Griffin and George G. Griffin, under the firm name of Schnull & Company, instituted proceedings before the Railroad Commission of Indiana, to procure a reduction of rates established by the complainant as above set forth, claiming that said rates were in excess of what would be a reasonable compensation to the complainant for

the services rendered by it in handling and carrying classified freight to which said rates were applicable, and thereupon, under date of December 14, 1906, the Railroad Commission of Indiana made and entered the following order:

'STATE OF INDIANA.

Railroad Commission of Indiana.

No. 6.

SCHNULL & COMPANY

vs.

VANDALIA RAILROAD COMPANY.

'The Commission after being fully advised in the premises, now finds that the rates complained of in the petition and now in force on the respondent's railroad, are unreasonable and unjust in that they are excessive, and that to the extent that they are excessive they are charged and collected in violation of law, and the respondent so failing to have just and reasonable rates in force on such railway, the Commission does now further find from the evidence that just and reasonable rates for the transportation of classified freight over that part of the respondent's line west from Indianapolis, Indiana, to the Indiana-Illinois State line should not exceed the rates specified in the following order of the Commission:

'It is therefore ordered by the Commission that the respondent, the Vandalia Railroad Company, after February 1, 1907, shall not charge or collect, for the transportation of traffic moving over its lines to all points from Indianapolis to the Indiana-Illinois

State line, as now classified by it, under the Official Classification, rates in excess of the following schedule:

RATES IN CENTS PER HUNDRED POUNDS.

From Indianapolis to Stations Named.	Miles.	Classes. First.	Second.	Third.	Fourth.	Fifth.	Sixth.
Ben Davis	6	8	7	6.5	5	3.5	2.5
Bridgeport	9	8.5	7.5	7	5	4	3
Oakplain	11	8.5	7.5	7	5	4	3
Plainfield	14	9	8	7	5.5	4	3
Gibson	15	9	8	7	5.5	4	3
Cartersburg	17	9.5	8.5	7.5	5.5	4.5	3
Clayton	20	9.5	8.5	7.5	5.5	4.5	3
Pecksburg	23	10.5	9.5	8.5	6.5	4.5	3.5
Amo	25	10.5	9.5	8.5	6.5	4.5	3.5
Coatesville	28	11	10	9	6.5	5	3.5
Fillmore	33	11.5	10.5	9	7	5	4
Alameda	36	12	11	9.5	7	5.5	4
Greencastle	39	12	11	9.5	7	5.5	4
Limedale	40	12	11	9.5	7	5.5	4
Hamrick	44	13	12	10.5	8	6	4.5
Reelsville	47	13.5	12	11	8	6	4.5
Eagles	50	13.5	12	11	8	6	4.5
Harmony	54	14	12.5	11	8.5	6.5	4.5
Knightsville	55	14	12.5	11	8.5	6.5	4.5
Brazil	57	14.5	13	11.5	8.5	6.5	5
Turner	59	14.5	13	11.5	8.5	6.5	5
Staunton	61	14.5	13	11.5	8.5	6.5	5
Cloverland	62	15.5	14	12.5	9.5	7	5
Seeleyville	65	15.5	14	12.5	9.5	7	5
Prairie	71	16	14.5	13	9.5	7	5.5
Terre Haute	73	16.5	15	13	10	7.5	5.5
Macksville	75	16.5	15	13	10	7.5	5.5
Liggett	77	17	15.5	13.5	10	7.5	5.5
Nelson	79	17	15.5	13.5	10	7.5	5.5

"That the defendants composing the firm of Schnull & Company are wholesale grocers in the city of Indianapolis, and in connection with their business make, and are desirous of making, daily shipments

of freight over complainant's line of railroad that will be affected by said order of the Railroad Commission."

The bill contains the following averments which are specifically denied in the answer, as below shown (p. 5):

"Your orator says that the rates fixed by it as hereinbefore set forth were entirely reasonable and that in handling the traffic covered thereby your orator received only sufficient compensation to cover the actual cost to it of handling and carrying such traffic, and that if your orator be required to comply with the order aforesaid of the Railroad Commission of Indiana and collect only the rates specified in said order, your orator will not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying the traffic covered by said order of the Railroad Commission of Indiana."

"Your orator says that under Section One (1), Article Fourteen (14) of the Constitution of the United States it cannot be lawfully deprived of its property without due process of law, nor be denied the equal protection of the laws; and your orator says that if the rates fixed by the order of the Railroad Commission of Indiana hereinbefore set forth be enforced, it will be compelled to carry the traffic covered by that order at less than the actual cost of such carriage, and will as a result, be deprived of its property without due process of law."

Each of the defendants in the answer (at p. 11):

"denies that the rates fixed and charged by complainant as aforesaid, upon classified freight, were reasonable and that in handling the traffic covered

thereby complainant only received sufficient compensation to cover the actual cost of handling and carrying such traffic, and denies that if complainant be required to comply with the orders aforesaid of said Railroad Commission of Indiana, and collect only the rates specified in said order, that complainant will not obtain revenue sufficient to reimburse it for actual outlay in handling and carrying the traffic covered by said order of said Railroad Commission; and denies if the rates fixed by the order of said Railroad Commission aforesaid be enforced, that complainant will be compelled to carry the traffic covered by said order at less than the actual cost of such carriage, and will as a result be deprived of its property without due process of law."

The bill contains the following further averments in substance, which are neither specifically admitted nor denied, but touching which the answer asks that strict proof be required of complainant.

That complainant is informed and believes, and states the fact to be, that other business establishments in the city of Indianapolis than that of Schnull & Company will seek to avail themselves of the rates fixed by said order of the Railroad Commission; that a refusal of complainant to comply with said order will involve it in a number of actions at law brought by shippers to recover damages allowed by the statute of Indiana, and also to actions to recover penalties prescribed by said statute payable to the State of Indiana, to wit, an act approved February 28, 1905, concerning the creation of the Railroad Commission, etc.; that each and all acts and doings of

the defendants herein, their successors in office and representatives in like condition, in the way of enforcing and collecting the damages and penalties allowed by said statute will tend to the manifest wrong, irreparable injury and oppression of the complainant. By an amendment to the bill (p. 12), it is averred that the loss complainant would sustain if compelled to handle the traffic at the rates mentioned in the order of the commission would be greatly in excess of two thousand ($2,000.00) dollars, exclusive of interest and costs, and that the damages and penalties to which it would be subjected for failure to comply with said order would be greatly in excess of two thousand ($2,000.00) dollars, exclusive of interest and costs.

* * * * * * * * * * * * *

On the 8th day of October, 1907, the cause was referred to a Special Master, Noble C. Butler, to "take the testimony concerning the matters in controversy and report the same to the court with his findings of fact and conclusions of law" (Rec., p. 13); and the Special Master filed his report set out in the transcript (pp. 14 to 19) and the evidence in the cause on the 6th day of March, 1909. (Rec., p. 13.) On the 5th day of April, 1909, the defendants filed exceptions to the Master's report. (Rec., p. 17.)

SPECIAL MASTER'S REPORT.

The findings in the Special Master's report touching a controlling question in the cause are based on a certain view of the law, therein shown, which view appellants allege is erroneous and for that reason we set out the substance of all the statements, findings and conclusions contained in said report which are as follows:

"The bill of complaint in this case charges that the Railroad Commission of Indiana on December 14, 1906, made and entered an order which in substance and effect" (under the construction given the order by the Master) "prohibits the complainant from charging or collecting rates for the transportation of classified freight from and between Indianapolis and the Illinois State line, and all intermediate points upon its road in excess of the rates that are designated in the order," and the construction given the order by the Master is apparently accepted by all parties and the case has been heard upon that construction.

"It is further charged in the bill that if the order of the Railroad Commission be enforced the complainant 'will not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying the traffic covered by said order,' and that an enforcement of said order will therefore deprive the complainant of its property without due process of law."

"The sole question presented for consideration by the pleadings is whether an enforced adoption of the rates prescribed by the order of the Railroad Commission would have the result alleged by the complainant.

"The Supreme Court has indicated the rules and principles which should be observed in determining this question. It held in *Railroad Co.* v. *Minnesota*, 186 U. S. 257, 264, that 'the presumption is that the rates fixed by the commission are reasonable and the burden of proof is upon the railroad company to show the contrary;' and in *Railway Co.* v. *Tompkins*, 176 U. S. 167, 173, that 'the case must be a clear one in behalf of the railroad company or the legislation of the State must be upheld.' In *Smith* v. *Ames*, 169 U. S. 466, 541, it expressed itself as follows: 'In our judgment it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits, must be determined without reference to the interstate business done by the carrier, or the profits derived from it. The State cannot justify unreasonably low rates for domestic transportation, considered alone upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. * * * It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business.'"

"The proofs which have been taken by me relate to the traffic over the road of the complainant between Indianapolis and the Illinois State line during the years 1904, 1905 and 1906. It has been possible to ascertain with sufficient certainty from the way-bills of the complainant the gross earnings upon

the transportation of classified freight during those years between points within the State, and I find and report they were as follows:

1904	$79,803 80
1905	91,067 56
1906	102,241 15

"These earnings were upon rates fixed by the complainant during the period immediately preceding the proposed reduction of them by the order of the Railroad Commission which became effective February 1, 1907."

"It is more difficult to ascertain the expenses that were incident to these earnings, and it is impossible to ascertain them exactly.

"In the present case the complainant has adopted, as the only practicable method of ascertaining the expenses incident to the transportation of classified freight between points upon its road within the State, an apportionment of them upon the ratio of all operating expenses to the whole earnings from every source upon the road between Indianapolis and the Illinois State line during the year 1904, and upon the St. Louis division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expenses being as follows:

1904	72 64
1905	73 03
1906	72 64

"It does not appear from the evidence that any unusual or improper items of expense were included in the computation of the ratio of operating expenses to the earnings, and the maintenance of practically the same ratio during the whole of the period under consideration denotes regularity.

"According to this method, which has the approval of the Supreme Court, in *Smith* v. *Ames, supra,* and *Railway Co.* v. *Tompkins, supra,* the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission between points within the State would have been as follows:

1904	$59,453 83
1905	66,506 64
1906	74,267 97

"The gross earnings during that period under the schedule of rates prescribed by the Railroad Commission, making a reduction of 34 per cent. and 34.05 per cent. in the actual amount of them, would have been as follows:

1904	$52,222 12
1905	60,079 13
1906	66,936 99

"There would have been accordingly a deficit or loss to the complainant upon the transportation of such freight during these years as follows:

1904	$7,231 71
1905	6,427 51
1906	7,330 98

"The cost of handling freight over the platform at the Indianapolis terminal was estimated according to the tonnage in 1905, by witness for the complainant, at 70.04 cents per ton, which is in substantial accord with other evidence.

"There has not been any evidence introduced by the defendants which impeaches the general accuracy of these figures. * * * If there be any difference in the ratio of operating expenses to earn-

ings in the transportation of domestic or local freight and interstate or through freight, it sufficiently appears from the testimony that the expense in the case of domestic or local freight is greater than in the case of interstate or through freight. In the absence of such testimony, 'it is obvious on a little reflection,' as was said by the Supreme Court in *Railway Co.* v. *Tompkins, supra,* that: 'the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy.'

"Other methods of ascertaining the cost of transportation according to the tonnage and by comparison with other roads have been suggested, but they require more facts than are disclosed by the evidence, and upon the facts as disclosed by the evidence I find and report that the method adopted by the complainant is the only practicable one in the present case.

"For the foregoing reasons I also find and report as a fact that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses; and I further find and report as a conclusion of law that the enforcement of the order of the Railroad Commission would deprive the complainant of its property without due process of law within the meaning of the Constitution of the United States and in violation of its provisions" (Rec., p. 14).

On the 29th day of June, 1909, the defendant's exceptions to the Master's report were overruled and the report of the Special Master confirmed. A find-

ing of the court was made that the equities are with the complainant, and that complainant is entitled to the relief prayed in the bill and the decree was made and entered setting aside the said order of the Railroad Commission set forth in the bill of complaint, and enjoining the defendants, Union B. Hunt, William J. Wood, and Charles V. McAdams, composing the Railroad Commission of the State of Indiana, and the successors in office of each and all of them, and the defendant, James Bingham, Attorney-General of the State of Indiana, and the defendant, Elliott R. Hooton, prosecuting attorney in and for the county of Marion, in said State, and their successors in office respectively from instituting or prosecuting, or causing to be instituted or prosecuted, any suit or suits against the complainant for the recovery of any penalty or penalties claimed to be recoverable under any law of the State of Indiana, because of complainant's noncompliance with said order of the Railroad Commission of Indiana, dated December 14, 1906, effective February 1, 1907; and enjoining the defendants Gustav A. Schnull, William J. Griffin and George G. Griffin, and each of them, and all other persons similarly situate with them as shippers or receivers of freight, included within said order of the Railroad Commission of Indiana, from instituting or prosecuting any suit or suits against the complainant for overcharges or damages of any kind claimed on account of complainant's noncompliance with said order of the Railroad Commission of Indiana, dated Decem-

ber 14, 1906, and effective February 1, 1907; and further adjudging and decreeing that the defendants pay the complainant all its costs in this behalf expended.

Rec., p. 41, *et seq.*

SPECIFICATION OF ERRORS RELIED UPON BY APPELLANTS.

The appellants specify the following particulars in which they allege the decree of the Circuit Court is erroneous:

In the report of the Special Master he finds the amount of income to the appellee, or earnings, for handling and carrying the classified freight in question, that would have been covered by the order of the Railroad Commission if it had been in force at that time, for each of the years 1904, 1905 and 1906, but said report contains no finding of the amount of expense incident or attributable to the handling and carrying of said freight during said years or any one of them, nor does it contain any finding of facts from which said expense for said years, or any one of them, can be ascertained or from which the ratio of said expense to earnings can be ascertained. On the contrary, said report shows upon its face affirmatively that there is no evidence in the cause or facts shown from which said expense for any of said years can be ascertained or its ratio to the earnings upon said classified freight, or that throw any light upon those questions. And in the absence of such evidence and facts, the report shows that

the Master assumes that the ratio of expense to earnings upon said classified freight for each one of said years may, as a matter of law, be taken to be the same ratio as that which the total operating expenses of the railroad or division thereof bears to the total income or earnings from every source on the railroad or division thereof for each of said years 1904, 1905 and 1906. And, upon that view of the law, and that only (which the appellants allege is an erroneous view), is based the finding and conclusion of the Master to the effect that if the rates prescribed by the order of the Railroad Commission in question were enforced, it would reduce the earnings upon the classified freight in question to an amount less than the expense of transporting the same, or in other words to confiscatory rates.

There is no testimony or evidence in the cause showing, or tending to show, that the percentage of expense to earnings upon the classified freight, that would be covered by the order of the Railroad Commission in question if it had been in effect during the years 1904, 1905 and 1906, was as much as the percentage of operating expenses to earnings upon the line or division of the road. On the contrary, the evidence shows affirmatively that the percentage of expense to earnings upon the former was not more than one-third as much as the percentage of operating expenses to income upon the latter. There is no evidence in the cause showing or tending to show that the rates established by order of the Railroad Commission in question, if enforced,

would be unreasonable, unjust or confiscatory. On the contrary, the evidence tends to show and does show that operating under said rates the appellee, for handling and carrying the classified freight covered by the order in question, would obtain ample revenue to reimburse it for all expense of handling and carrying the same, and in addition to constitute a very large profit upon the handling and carrying thereof, to wit, a profit of approximately 300 per cent. of the aggregate expense of said handling and carrying. The court overruled each and all of the exceptions to the Master's report (p. 41). The appellants, therefore, respectfully allege that the Circuit Court erred in confirming said report, finding the equities were with the complainant and rendering the decree entered in said cause, as assigned in their 4th, 5th, 6th and 7th assignment of errors respectively (p. 51). And that the said court also erred in overruling each of the exceptions of the appellants to the Special Master's report, numbered respectively 6, 10, 11, 12, 13 and 14.

Said Exception No. 6 being as follows:

6. "The said report is erroneous in finding that the expense of transporting classified freight over complainant's road between Indianapolis and the Illinois State line for each of the years 1904, 1905 and 1906, respectively, to be as follows: For the year 1904, $59,453.83; for the year 1905, $66,506.64, and for the year 1906, $72,267.97." (Rec., p. 18.)

and the overruling of said exception constitutes appellant's 9th assignment of error. (P. 52.)

Said Exception No. 10 being as follows:

"The said report is erroneous in that the said Special Master found that the class rates ordered by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses, when complainant failed to prove or attempt to prove the cost of transporting said classified freight from which said earnings *was* produced." (Rec., p. 19.)

and overruling of such exception constituting appellant's 10th assignment of error (p. 52).

Said Exception No. 11 being as follows:

"That said report is erroneous in that the Special Master adopted as the only practical method of ascertaining the expenses incident to the transportation of said classified freight which originated on the line between Indianapolis and the Illinois State line, both points included, and which ended on that same line for the years ending December 31, 1904, 1905 and 1906, respectively, 'an apportionment of them upon the ratio of all operating expenses to the whole earnings from every source upon the road between Indianapolis and the Illinois State line during the year 1904, and upon the St. Louis Division, which extends from Indianapolis *and* the Illinois State line during the year 1904, and upon the St. Louis Division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expense being as follows: 1904, 72.64 per cent.; 1905, 73.03 per cent. and 1906, 72.64 per cent,' because it takes into consideration complainant's interstate business, with its losses and profits, and because its use leads to impossible, unjust and erroneous conclusions, all of which is unfair to defend-

ants, as will hereafter more fully appear'' (Rec., p. 19); and the overruling thereof constituting appellant's 11th assignment of error (p. 52).

Said Exception No. 12 being as follows:

"Said report is erroneous for the reason that if the failure to prove either accurately or approximately the expense of handling the traffic in question was to have any influence on said report of the Special Master, it should adversely affect the complainant and not the defendant, as it was the duty of the complainant to apportion the cost of handling traffic in question, and it failed to either apportion the exact cost or submit facts from which the cost could reasonably be estimated'' (Rec., p. 19);

and the overruling thereof constituting the appellant's 12th assignment of error (p. 53).

Said Exception No. 13 being as follows:

"The said report is erroneous in that it fails to show that complainant did not prove its allegation made in its bill of complaint that it could not obtain revenue sufficient to reimburse it for its outlay in handling and carrying said classified traffic on the rates fixed by the Railroad Commission of Indiana. In fact, the report shows that none of the witnesses of complainant could tell the cost of handling and carrying the said classified traffic or even tell what it would cost approximately, and the evidence further shows that no attempt or effort was made by the complainant or any of its officers or employes to ascertain and fix either accurately or approximately the cost of handling and carrying the classified traffic within the State of Indiana which the Master reported produced in the year 1904, $79,-

803.80, in the year 1905, $91,067.56 and in the year 1906, $102,241.15" (Rec., p. 19);

and the overruling thereof constituting appellant's 13th assignment of error (p. 53).

Said Exception No. 14 being as follows:

"The said report is erroneous in that the Special Master ascertained the expense of producing the revenue from the classified freight for each of the years 1904, 1905 and 1906, respectively, which originated and ended on the line of complainant's road between Indianapolis and the Illinois State line, both points included, by assuming that the ratio of expense for producing said revenue was the same ratio of expense for producing revenue on complainant's entire business on its line of road from Indianapolis, Indiana, to East St. Louis, Illinois, which said business included passenger, freight, mail and express, done within the State of Illinois as well as the State of Indiana, and includes traffic destined to and coming from other States than the State of Indiana" (Rec., pp. 19-20);

and the overruling thereof constituting appellant's 14th assignment of error (p. 53).

ARGUMENT.

The Special Master's report shows upon its face, that the findings therein touching material and controlling facts in the case are based upon an erroneous view of the law, and that in reality there is no evidence in the cause to support the findings as to such facts. (T., p. 14.)

The report of the Master assumes that as to the transportation of the classified freight covered by the order of the commission in question, the expense incident and attributable to said transportation is the same per cent. of the earnings thereon as is the total operating expenses of the road or division to the total income from every source upon the road or division; shows upon its face that there is no evidence or facts to support such assumption, and that the assumption is based upon the construction which the Master places upon the cases of *Smyth* v. *Ames*, 169 U. S. 466, and *Chicago, Milwaukee and St. Paul Railway Company* v. *Tompkins*, 176 U. S 167.

The cases cited lend no support whatever to the interpretation so placed on them by the Master. On the contrary they, in common with other cases, show that "the presumption is that the rates fixed by the commission are reasonable and the burden of proof is upon the railroad company to show the contrary," and "make a clear case in behalf of the railroad company," or the order of the commission must be upheld.

Smyth v. *Ames*, 169 U. S. 466; p. 529;
Chicago, Milwaukee and St. Paul Railway Co. v. *Tompkins*, 176 U. S. 167, 173;
Minneapolis & St. Louis R. R. Co. v. *Minnesota*, 186 U. S. 257, 264;
City of Knoxville v. *Knoxville Water Co.*, 212 U. S. 1, 7;
Wilcox et al. v. *Consolidated Gas Co.*, 212 U. S. 19, 41.

Looking to the Master's report (p. 15), it will be seen that it finds the gross earnings upon the transportation of the classified freight during the years 1904, 1905 and 1906, respectively, to be: $79,803.80; $91,067.56; $102,241.15.

We quote the language of the report touching the findings as to the expense of the transportation in question as follows (pp. 15, 16 and 17):

"In the present case the complainant has adopted, as the only practicable method of ascertaining the expenses incident to the transportation of classified freight between points upon its road within the State, an apportionment of them upon the ratio of all operating expenses to the whole earnings from every source upon the road between Indianapolis and the Illinois State line during the year 1904, and upon the St. Louis Division, which extends from Indianapolis to St. Louis, during the years 1905 and 1906, the percentage of expenses being as follows:

1904.....	72 64
1905.....	73 03
1906.....	72 64".

"According to this method [the method adopted by the complainant above mentioned], which has the approval of the Supreme Court, in *Smyth* v. *Ames, supra,* and *Railway Co.* v. *Tompkins, supra,* the operating expenses chargeable against earnings upon the transportation of classified freight covered by the order of the Railroad Commission between points within the State would have been as follows:

1904	$59,453 83
1905	66,506 64
1906	74,267 97."

"Other methods of ascertaining the cost of transportation according to the tonnage and by comparison with other roads have been suggested, but they require more facts than are disclosed by the evidence, and upon the facts as disclosed by the evidence. I find and report that the method adopted by the complainant is the only practicable one in the present case."

"For the foregoing reasons I also find and report as a fact that the schedule of rates prescribed by the Railroad Commission of Indiana, if enforced, would reduce the earnings of the complainant below its operating expenses."

It will be seen from the language quoted that the Master finds the operating expenses chargeable against earnings on freight covered by the order of the commission by assuming that said operating expenses are the same per cent. of said earnings that the total operating expenses of the road or division are of the whole earnings from every source upon

the road or division, and also that he finds that it would "require more facts than are disclosed by the evidence" to ascertain the cost of transportation of said classified freight by any other method.

This language also occurs in the report (pp. 16 and 17):

"If there be any difference in the ratio of operating expenses to earnings in the transportation of domestic or local freight and interstate or through freight, it sufficiently appears from the testimony that the expense in the case of domestic or local freight is greater than in the case of interstate or through freight. In the absence of such testimony 'it is obvious on a little reflection,' as was said by the Supreme Court in *Railway Co.* v. *Tompkins, supra*, that 'the cost of moving local freight is greater than that of moving through freight, and equally obvious that it is almost if not quite impossible to determine the difference with mathematical accuracy'."

It is clear, therefore, not only from the previous quotations but from the last one, that the report assumes that the ratio of operating expenses to earnings on the transportation of the freight covered by the commission's order depends exclusively upon the question of whether the expense of transportation of the classified freight in question is greater per quantity—that is to say per ton per mile—than the expense of the transportation of other freight. The language quoted says in effect that the evidence shows that fact and that it is a fact that is "obvious on a little reflection."

The report also finds (p. 16) the per cent. reduction that the order of the Railroad Commission, if enforced, would make of the earnings upon the classified freight in question, to wit, a reduction of 34 per cent. or 34.5 per cent, meaning clearly one of those per cents. for one of the years named and the other per cent. for the other years named.

Taking for example the year 1905, the facts found in the report, aside from calculations, may be stated in this sentence: The total earnings upon the classified freight in question were $91,067.56; the total operating expenses of the St. Louis Division of the road was of the whole earnings from every source upon said division of the road 73.03 per cent.; the order of the Railroad Commission in question, if in force at that time, would have reduced the earnings upon the classified freight in question, covered by the order of the commission, 34 per cent. or 34.5 per cent.; there are no facts disclosed by the evidence from which the cost of transportation of said classified freight may be ascertained except that of assuming that the per cent. of expense to earnings thereon is the same as the per cent. to earnings of the whole division of the road.

It is not disclosed in the Master's report whether transportation of the freight covered by the order of the commission constitutes a large or small fraction of the total business of the St. Louis Division of the road. Unless the law were such as that the method adopted by him might be applied in any case, whether the fraction of business involved were

large or small proportionately to the whole business, there is nothing in his report to show that it could be applied in this case. It may, therefore, for the purpose of considering the report, be assumed to be any fraction. We will assume, that the business covered by the order is that fraction of the total business of the St. Louis Division which the evidence will show when we arrive at a consideration thereof; that the traffic covered by the order of the Railroad Commission in question constitutes but 3-10 of one per cent. of the total business of the St. Louis Division.

Neither is anything shown in the Master's report touching the question of what rates per quantity—per ton mile for instance—were charged for transporting the traffic covered by the commission's order at any time. The report clearly goes upon the theory that that is an immaterial question in the case. We will assume, therefore, that the rates charged upon the traffic named, that covered by the order of the commission, per quantity—per ton, per mile for instance—are what will appear to be true when we consider the evidence, namely, that the rates charged upon the traffic covered by the order per ton per mile were more than ten times as much as the average charge by appellee for transporting freight upon all of its lines including the St. Louis Division.

The case of *Smyth* v. *Ames, supra*, cited by the Master, lends no support whatever to the proposition that the ratio of expense to earnings upon the

freight covered by the commission's order is the same as that of all operating expenses to the whole division of the road, or that it may be assumed to be the same. In that case there was before the court a question of the ratio of operating expenses to earnings upon local freight, but the court did not deal with the ascertaining of that ratio as a matter of law, did not assume without proof that it was either greater, equal or less than the ratio of all operating expenses of the road to all earnings thereon. On the contrary, the court dealt with it as a question of fact, and tried and determined the fact upon the evidence before it, as the following language of the court clearly shows (169 U. S. 529):

"He [Mr. Dilworth] estimated that the percentage of operating expenses on local business would exceed the percentage of operating expenses on all business by at least ten per cent., and that it might go as high as twenty per cent. or higher. And this view is more than sustained by the evidence of witnesses possessing special knowledge of railroad transportation and of the cost of doing local business as compared with what is called through business. Indeed, one of those witnesses states that the cost of carrying local freight is four times as much as the cost of through freight per ton per mile; another, that the cost of the short haul is "reasonably double the long haul." If due regard be had to the testimony—and we have no other basis for our judgment—we are not permitted to place the extra cost of local business at less than ten per cent. greater than the percentage of the cost of all business."

On page 533 the court again says:

"Mr. Dilworth, as we have seen, testified that if the local business alone were considered, the percentage of expenses to earnings upon such business would be at least ten per cent. more than the general percentage of expenses to earnings on all business, both through and local."

Indeed, everything that the court says upon the question from page 528 to page 539 shows that the court is dealing with the question as a question of fact upon the proof and that it determines the question upon the proof. For instance, in the case of the Burlington Company involved, it is found that the percentage of operating expenses to earnings on all business of the road was 66.24 per cent.; and on the local business it was 10 per cent. more, and accordingly 76.24 per cent (p. 534).

The case of *Chicago, Milwaukee and St. Paul Railway Co.* v. *Tompkins, supra*, lends to the method adopted by the Master no better support than the case last mentioned. For instance, the court says (on p. 172):

"Few cases are more difficult or perplexing than those which involve an inquiry whether the rates prescribed by a State Legislature for the carriage of passengers and freight are unreasonable. And yet this difficulty affords no excuse for a failure to examine and solve the questions involved."

And the court further says (pp. 173-4):

"In approaching the consideration of a case of this kind we start with the presumption that the act

of the Legislature is valid, and upon any company seeking to challenge its validity rests the burden of proving that it infringes the constitutional guarantee of protection to property. The case must be a clear one in behalf of the railroad company or the legislation of the State must be upheld.

"Such being unquestionably the law, it is obviously of the utmost importance that the facts shall be clearly and accurately found and distinctly stated by the trial court, and that those facts shall sustain the conclusion reached."

And the court further says, on p. 179:

"We think, therefore, there was error in the failure to find the cost of doing the local business, and that only by a comparison between the gross receipts and the cost of doing the business, ascertaining thus the net earnings, can the true effect of the reduction of rates be determined."

It is perfectly clear that if the rate of charges for transportation of the classified freight in question were ten times too high as compared with the average rates on other classes of freight on the whole division of the road, the method adopted by the Master would make the cost also of that freight practically ten times too high. The excess charged upon that freight would have but little influence to increase the total income of the road, and, consequently, decrease the ratio of operating expenses of the whole division of the road to the income thereof; so that, taking the average ratio of all expenses to all income upon the division as the

ratio of expense to income upon the classified freight, the expense of the classified freight would appear to be a certain amount, which in reality would be ten times too much in proportion to the actual income thereon.

It is also clear that if the Master had presumed, as the law would require him to do, that the rates upon the classified freight in question as fixed by the order of the Railroad Commission, were just and reasonable instead of presuming as against that order that they were just and reasonable before the reduction by the Railroad Commission, and acting upon that presumption had found what the income would be upon the classified freight under the rates prescribed by the order, and what the income would be of the total division of the road inclusive of the income as so reduced, and then taken as the per cent. of expense to earnings upon the classified freight so reduced, the average per cent. of all operating expenses upon the division to all earnings thereon, he would have found that the commission had reduced the rates in question to the exact line of justice, that the amount of reduction made, if he had calculated it, was precisely what they ought to have done. Such calculation in that event would have proved nothing except that if the assumption of the Master were true, then the result of the calculation would appear true. It would have proved, in other words, no more and no less than the calculation which the Master has made.

The Master has found, apparently, that if the rates of the commission were enforced, the income for transporting the classified freight in question would be less than the expenses thereof, and he has found this fact in the manner in which he has proceeded without finding what the expenses would be in fact, or anything that would throw any light upon that question. If this method could be applied, the determination could be made just as well without knowing the income from the traffic in question as without knowing the expense thereof. It is an unnecessary labor to find either of them if one may be dispensed with. In the case in hand, when the Master found that the reduction was as much as 34 per cent. of the income, and that the costs were 73.03 per cent. thereof, it took no calculation to show that any number minus 34 per cent. thereof is less than 73.03 per cent. thereof. That fact is absolutely true of any quantity.

The conditions in question here and calculations contained in the Master's report, may be paralleled by a very simple illustration as follows:

Disregarding market probabilities, suppose a man buys 100 bushels of seed corn at $1.00 per bushel and sells it at 400 per cent. advance, to wit, at $5.00. That at the same time he buys 30,000 bushels of other corn at 60 cents per bushel, and sells it at an advance of 25 per cent., namely at 75 cents per bushel. His account would stand with corn as follows:

COST OF CORN.

100 bu. of seed corn at $1.00 per bu..	$100 00
30,000 bu. of other corn at $0.60 per bu..	18,000 00
Total cost of all corn.....	$18,100 00

ON SALE, CORN PRODUCED.

100 bu. of seed corn, at $5.00 per bu.	$500 00
30,000 bu. of other corn, at $0.75 per bu.	22,500 00
Total produced by corn.....	$23,000 00

Total expense of all corn, $18,100.00, is 78.7 per cent. of the total income from corn, $23,000.00.

Subsequent to the transaction, the question in some way arises, What would have been the effect upon the transaction in seed corn, as to loss or gain, provided some schedule of rates or other thing had prevented the sale of the seed corn at a higher price than 34 per cent. reduction on what it actually produced? and consequently after the method of the Master in this case the calculation is made and facts shown as follows:

Total produced by seed corn.....	$500 00

Per cent. of cost to earnings on all corn 78.7 per cent. Taking as the cost of seed corn the per cent. of its earnings which the cost of all the corn is of the earnings of all corn, to wit, 78.7 per cent., seed corn would cost $393.50. If the gross earnings of seed corn had been reduced 34 per cent., the earnings would have been $330.00. There would have been

accordingly a net loss on the transaction in seed corn of $63.50.

Such is the operation of the method adopted by the complainant when applied to a transaction in corn. The Master's report says of the calculations there made:

"There has not been any evidence introduced by the defendants which impeaches the general accuracy of these figures. They have been sharply questioned and criticized, but they cannot be rejected."

And so we say with reference to the figures we have here given as to the transaction in corn. There is nothing in mathematics "which impeaches the general accuracy of these figures." They may be "questioned and criticized, but they cannot be rejected" if the Master's method be sound.

The whole of the complainant's "practicable method" as applied to this case is, that when a Railroad Commission has made an order or prescribed rates reducing the charges for carrying a class or species of intrastate freight, the order may be set aside upon no other fact shown in the case than that the whole income of the road arising from intrastate and interstate traffic would not have stood the same per cent. of reduction. This is in the face of the holding in *Smyth* v. *Ames*, *supra*, as shown by the language quoted in the Master's report, of which a part is as follows:

"The State cannot justify unreasonably low rates for domestic transportation, considered alone upon

the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able in that way to meet losses on its interstate business. * * * When it [the State] undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable as between the carrier and the public in respect of domestic business."

In the Master's report is this statement:

"The cost of handling freight over the platform at the Indianapolis terminal was estimated according to the tonnage, in 1905, by a witness for the complainant, at 70.4 cents per ton, which is in substantial accord with other evidence."

There is no finding here "that the cost of handling freight over the platform" was in fact what the witness estimated it to be, and if it were found as a fact, it could be but an evidentiary circumstance along with other evidence, which taken with other facts found in the Master's report would have no influence upon what the ultimate finding and conclusion should be. Besides, as will be shown in the evidence, the estimate named of the witness is in conflict with very much reliable testimony throwing light on the question and it would have, if true, no application to a large proportion of the freight in question here.

It is not a question in this case as to whether the

Master has arrived at a determination of the facts before him with mathematical accuracy. As well said in *Railway Company* v. *Tompkins, supra,* 176 U. S., on page 71:

"There are many things that have to be determined by court and jury in respect to which mathematical accuracy is not possible. Take the ordinary case of condemnation of real estate, the value is to be determined by the trial tribunal, whether jury or court, and yet no one is able to state the exact value."

It is true that in a great proportion of cases that are tried in judicial tribunals if not in the majority of them, especially cases other than those that arise upon mere matters of account or upon written instruments, they cannot be determined with mathematical accuracy. If independent tribunals were called upon to try the same question, they perhaps would not arrive at exactly the same conclusion. These facts, however, give no basis for the idea that questions of fact may be determined in judicial tribunals without evidence. In the Master's report, as before stated, it is not a question of arriving at the ultimate fact with "mathematical accuracy." The trouble is that it finds no facts at all that bear upon the controlling and important question in the case. There is, in other words, nothing found that throws any light whatever upon the ratio of expense to earnings of the traffic covered by the order of the Railroad Commission. The report in reality

is absolutely silent upon that question, and finds affirmatively that there are no facts or evidence that will warrant any finding upon the subject.

II.

In ordinary equity suits, findings of the Master and the court below are conclusive upon appeal unless unsupported by the evidence or made under erroneous views of law; but where the constitutionality of a legislative act is involved or of a legislative commission, acting under authority of a legislative enactment, the Supreme Court from the respect due to the legislative authority will not regard such findings as conclusive.

City of Knoxville v. *Knoxville Water Co.*, 212 U. S. 1, pp. 7, 8;
Wilcox et al. v. *Consolidated Gas Co.*, 212 U. S. 19, p. 41.

III.

There is no evidence in the cause that supports or tends to support the proposition, that the rates prescribed in the order of the Railroad Commission in question if enforced would be confiscatory, unreasonable or unjust. The evidence on the other hand tends to show and does show the contrary.

The specific controlling fact in the case is that there is no evidence in the cause tending to show that the percentage of operating expenses to earnings upon the transportation of the classified freight,

covered by the order of the Railroad Commission in question, was more than 26.27 per cent. at the time said order of the commission was made or at any time during the years 1904, 1905 and 1906. On the contrary, the evidence tends to show and shows that said expenses were no more, if not even less, than said per cent. of the earnings.

A preliminary statement which we here make of certain facts shown in the evidence, and giving an outline of all of the evidence, will enable us hereafter to present more concisely the controverted questions within the issue, together with all of the evidence that bears upon said questions:

The line of railroad in question, extending from Indianapolis westward across a part of the State of Indiana and across the State of Illinois to the city of St. Louis, has been operated continuously for a number of years—the evidence shows since prior to January 1, 1904—as one division of the operating company.

See testimony of W. C. Downing, p. 98.

Prior, however, to January 1, 1905, so much of the line as is situate in Indiana was owned by the Terre Haute and Indianapolis Railroad Company and so much as is situate in the State of Illinois was owned by the St. Louis, Vandalia and Terre Haute Railroad Company.

While the part situate in Indiana was so owned by the Terre Haute and Indianapolis Company, the

accounts of that company were kept separately from that of all other companies.

On the 1st day of January, 1905, a consolidation became effective, by which the Vandalia Railroad Company became, and has ever since been, the owner and operator of the whole line from Indianapolis to St. Louis, as well as other lines that went into the consolidation, namely: the Terre Haute and Logansport, extending from Terre Haute to South Bend, Indiana; Logansport and Toledo, extending from Logansport to Butler, Indiana; and the Indianapolis and Vincennes, extending from Indianapolis to Vincennes, Indiana, and the operator of a leased line of road known as the Terre Haute and Peoria. Since the consolidation the line extending between Indianapolis and St. Louis has constituted the appellee's St. Louis division, and the accounts of the Terre Haute and Peoria line have been kept separately from that of the other lines owned by appellee.

The appellee's method of keeping accounts has been such as that the total earnings and total expenses of the St. Louis division can be told from the accounts, but in the consolidated statement at the end of the year, showing all of the earnings and all of the expenses of the company, they are not divided as to its operating divisions, except as to the said leased line.

See testimony of complainant's witness, W. S. Roney, pp. 63-64.

The witness, W. S. Roney, further testifies that he is the auditor of the appellee and has been of the appellee and its predecessor since 1876, and that he keeps the accounts of the company (pp. 13, 14); that the witness can give the earnings and expenses specifically of the line between Indianapolis and the Illinois State line for the year 1904 and of the St. Louis division for the years 1905 and 1906 (p. 64). That in the year 1904, for the fiscal year ending October 31, 1904, the ratio of operating expenses to earnings of the line between Indianapolis and the Illinois State line was 76.4 per cent., and for the two months ending December 31, 1904, being the two months immediately preceding the consolidation, the ratio of operating expenses to earnings was 74.5 per cent.; that each of these percentages are based upon the total earnings from all sources, and the total expense charged as operating expense. That there has been no calculation made, and there is no means possible to ascertain the actual relation of operating expenses in the freight service to revenue derived from freight service (p. 68). Although the witness states that he can tell the earnings and expenses of the line between Indianapolis and the Illinois State line for the year 1904, he does not do so, and there is nothing in the evidence showing either the total expenses or the total earnings of said line for said year. The witness further states that his testimony giving the per cent. for said year of 1904 of earnings to expenses has reference to the transportation

of freight and passengers, and in no way refers to the cost of the classified intrastate freight in question here, except as the expense of the latter is a part of the expense of the former. That the distance from Indianapolis to the Illinois State line on the Vandalia Railroad is 80 miles, and to Terre Haute about 73 (pp. 94 and 95). That the appellee company directed the witness to make a special examination of the way-bills for the purpose of ascertaining the income upon the intrastate traffic in question upon the line from Indianapolis to the State line for the year 1904 and on the St. Louis division of the line for the years 1905 and 1906, which he and the witness, Mr. Buchanan, did. So far as tonnage and revenue from the intrastate freight mentioned, for the years mentioned, is concerned, the testimony of the witness Roney and witness Buchanan are in accord so far as either of them touches the subject, the testimony of Buchanan being directed entirely to that subject, and the matters testified to by both of them on that subject are shown in a tabulated statement contained in this brief on pages 50, 51, 52 and 53, which will hereafter be explained, giving reference to the pages of the testimony from which derived. The witness Roney also testified touching earnings and expenses of the St. Louis division of the Vandalia Railroad for the years 1905 and 1906, respectively, and in connection with his evidence there was introduced in evidence a tabulated statement of earnings and expenses for

said year 1905, which statement embraces all the data to which Mr. Roney testified orally. The heading of the statement would indicate that it was a statement of the Vandalia Railroad Company, but it is a statement concerning the St. Louis division of that company only, as is shown by the testimony of the witness Roney and statement of appellee's counsel on page 69. Said statement is marked Exhibit No. 1 and begins on page 69.

A similar statement of earnings and expenses of said Vandalia Line for the year 1906 is in evidence (p. 73).

A detailed statement of the business for the year 1905 of all the lines of the Vandalia Company, exclusive of the Terre Haute and Peoria Railroad, and of said last named railroad separately, and of all of the lines of the Vandalia Railroad, including said last named road, is in evidence (p. 203).

Besides the testimony of the witnesses Roney and Buchanan, above named, four witnesses testified in the case, two of whom, to wit, Downing and Saur, were produced on behalf of the complainant, and two, Graham and Hodgdon, were produced on behalf of the defendants.

The witness, W. C. Downing, is superintendent of the St. Louis division of the Vandalia Railroad (p. 98). His testimony is directed in general to the manner of making up expense accounts of railroad operation, as to how they are arrived at, placed under various heads of accounts, and as to elements in

the business that enhance the cost of transporting local and classified freight over that of through freight, etc. (pp. 98 to 118). This witness gives the only estimate touching the cost of transporting the classified freight in question in the case or touching the ratio of that cost to any other quantity or amount. (See pp. 116, 117 and 118). He testifies, in effect, that he and plaintiff's counsel made an estimate for the year 1904 and that the best they could do was to state "That if all of the freight on the road had been handled on the basis of this increased cost as to local freight, the expenses would have been increased 14.6 per cent" (pp. 117 and 118).

The witness, D. F. Saur, is chief claim clerk in the general freight office of appellee company at St. Louis (p. 119). He testified that when engaged as special agent in analyzing expenses his duties took him to analyze expenses of the Indianapolis freight station for the year 1905; that according to the estimate he made, the cost per ton for handling platform freight at the Indianapolis freight station for that year was 70.4 cents per ton (p. 120). He testifies showing the various elements of expense that he took into consideration in making the estimate and gives a statement of said estimate, which is in evidence as Exhibit 3, at page 124.

The witness, Edward F. Graham, was called by the defendants. He is freight agent of the appellee company at Indianapolis and has charge of the freight station, and his testimony is directed to

questions touching elements of expense in the handling of freight over the platform and otherwise at said station (p. 134).

The witness, William Hodgdon, was called by the defendants. He is freight traffic manager of the Pennsylvania Lines west of Pittsburg, and was general freight agent of the appellee railroad company and its predecessor prior to January, 1907 (p. 173). His testimony was directed to some estimates claimed to have been made by him while the matter in controversy was pending before the Railroad Commission. He testified that the table of class rates, which was presented by him in some conference at that time, was a proposition of compromise. He testifies (p. 183) that he never had any experience in the operating department of a railroad and no education upon the subject of operating expense, and gives the rates that were submitted by him to the Indiana Railroad Commission and shippers, which he had previously mentioned (p. 198).

There is in evidence a stipulation as to the rates in force at the time the order of the commission was made and before, upon the St. Louis division of the appellee's line, to the various points named in the order of the Railroad Commission, set out in the bill of complaint (p. 198).

There is also in evidence a copy of the Central Freight Association schedule of minimum class rates (pp. 199-200).

A statement of class rates from Chicago, Illinois,

to Greencastle, Indiana, by way of Chicago and Eastern Illinois Railroad and the Vandalia Line is in evidence (p. 201), and of the per cent. the Vandalia Line gets of those rates, and of the distance from Terre Haute to Greencastle and from Indianapolis to Greencastle, and of the class rates from New York to Terre Haute by way of the Pennsylvania and Vandalia Line and by way of the Erie, C., H. & D. and Vandalia Line (p. 202).

A statement of the number of empty and loaded cars handled in and out of the Indianapolis freight station and of the per cent. which the Vandalia Railroad receives on classified freight from New York to Terre Haute is in evidence (p. 202).

There is a statement in evidence of class freight rates on the Pennsylvania Railroad, Louisville division, compared with the rates on appellee's road, St. Louis division in question (p. 204); and other statements of rates on classified freight on other roads compared with those on the appellee's line in question (pp. 205, 206, 207).

The witness, John H. Buchanan, testifies that he is chief clerk to the assistant treasurer of the appellee company, and is the gentleman whom the auditor, Mr. Roney, detailed to make the statement of the earnings on traffic originating and ending on the line in question between Indianapolis and the Illinois State line, and made such statement, for the years 1904, 1905 and 1906 (pp. 77-78), and testifying from that statement (pp. 82-89), the witness

gives the total weight in pounds and revenue arising therefrom of each class of freight originating and ending within the State of Indiana, from Indianapolis to the Illinois State line, on the St. Louis division of appellee's railway; and also gave what would be the revenue derived from each class for each of said years, if the schedule of rates prescribed by the Railroad Commission in the order in question had been applied. The witness also gave the weight in pounds and revenue derived from each class of that part of the freight above mentioned which originated in the city of Indianapolis and terminated on said line within the State of Indiana; and also the revenue that would have been derived from each class if the rates prescribed by the commission had been applied.

In the table below, on page 50 of this brief, headed "TABLE 1—1905," is given for each of the six classes of freight originating and ending at stations in Indiana, inclusive of Indianapolis, the pounds and revenue derived therefrom as testified to by said witness, and in "TABLE 2—1905," (p. 51) is given the same pounds and the revenue that would have been derived if the rates prescribed by the order of the Railroad Commission had been applied as testified to by said witness. In "TABLE 3—1905," (p. 52) is given of each class the pounds and revenue derived from so much of the freight above mentioned as originated at Indianapolis, in the State of Indiana, and terminated on the St. Louis division

of appellee's line within said State, as testified to by said witness. And in "TABLE 4—1905," (p. 53) is given the same pounds and revenue that would have been derived therefrom had the order of the Railroad Commission in question been in effect at the time as testified to by said witness.

Similar tables, taken from the testimony of said witnesses and in the same way, for each of the years 1904 and 1906, will be found on pages 67 to 74 of this brief.

An explanation of how the data in the following tables was derived, aside from the pounds and revenue, will be found immediately following the tables.

TABLE 1, 1905.

CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1905.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	6,395,326	3,197.663	$16,377 61	$5 12	30	95,929.89	17.07
2	4,743,012	2,371.506	9,342 88	3 94	30	71,145.18	13.13
3	10,688,749	5,344.3745	16,816 99	3 15	30	160,331.23	10.49
4	5,868,931	2,934.4655	6,383 41	2 18	28	82,165.03	7.77
5	41,074,459	20,537.2295	35,331 61	1 72	30	616,116.88	5.73
6	9,005,850	4,502.925	6,815 06	1.51	30	135,087.75	5.05
Total	77,776,327	38,888.1635	$91,067 56			1,160,775.96	
Average				$2 34	29		7.85

TABLE 2, 1905.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1905.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	6,395,326	3,197.663	$9,681 66	$3 03	30	95,929.89	10.1
2	4,743,012	2,371.506	5,915 76	2 49	30	71,145.18	8.32
3	10,688,749	5,344.3745	10,254 65	1 92	30	160,331.23	6.40
4	5,868,931	2,934.4655	4,422 82	1 51	28	82,165.03	5.38
5	41,074,459	20,537.2295	25,352 24	1 23	30	616,116.88	4.11
6	9,005,850	4,502.925	4,452 00	99	30	135,087.75	3.30
Total	77,776,327	38,888.1635	$60,079 13			1,160,775.96	
Average				$1 54	29		5.17

TABLE 3, 1905.

CLASSIFIED FREIGHT, ORIGINATING AT INDIANAPOLIS, INDIANA, AND ENDING AT STATIONS IN SAID STATE, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1905.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	4,069,993	2,034.9515	$10,649 79	$5 23	43	87,512.91	12.17
2	2,882,174	1,441.087	5,885 47	4 08	43	61,966.74	9.49
3	7,688,949	3,844.005	12,320 68	3 20	30	115,320.15	10.68
4	3,602,011	1,801.0055	3,911 12	2 17	28	50,428.15	7.75
5	6,119,862	3,059.931	5,632 74	1 84	57	174,416.06	3.23
6	2,440,563	12,220.280	1,893 54	1 48	30	36,608.40	4.92
Total	26,802,520	13,401.260	$40,203 34			526,252.41	
Average				$3 00	39		7.64

TABLE 4, 1905.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AT INDIANAPOLIS, INDIANA, AND ENDING AT STATIONS IN SAID STATE, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1905.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	4,069,903	2,034.9515	$6,395 97	$3 13	43	87,512.91	7.31
2	2,882,174	1,441.087	3,790 42	2 63	43	61,966.74	6.12
3	7,688,010	3,844.005	7,693 51	2 00	30	115,320.15	6.67
4	3,602,011	1,801.0055	2,756 83	1 53	28	50,428.15	5.47
5	6,119,862	3,059.931	4,292 46	1 40	57	174,416.06	2.46
6	2,440,560	1,220.280	1,178 90	97	30	36,608.40	3.22
Total	26,802,520	13,401.260	$26,108 09			526,252.41	
Average				$1 95	39		4.96

In the above tables, the pounds and revenue of each class of freight having been given by the witness Buchanan, the number of tons are found by dividing pounds by 2,000, and the revenue per ton by dividing the total revenue by the number of tons.

The stations and distances on the St. Louis division of appellee's line are shown in the order of the Railroad Commission, set out in the bill of complaint (p. 10), and also appellee's rates in force to certain of said stations (p. 9). And by stipulation (p. 198) the rates are shown to each one of the intermediate stations, the rates all being in cents per hundred pounds. Taking then, from the tables above, the revenue per hundred pounds for each class of freight, it was compared with the rates on appellee's St. Louis division and the average rate of haul for each class of freight during the year ascertained. For instance, there follows here a table showing the stations in groups, distances and rates in cents per hundred pounds to each station from Indianapolis for the year 1905. As to second class freight, for instance, the average revenue for the year was 19½ cents per hundred, which, on appellee's line, would carry thirty miles according to its rates. The average rate per hundred for third class freight was 15½ cents per hundred, which would carry 30 miles; for fourth class freight was 11 cents, which would carry 28 miles, etc. By this means the "*average miles hauled*" of each class of freight was found and then, by computation, the total ton miles of haul was found, and the revenue per ton per mile

in cents. By the same method the data contained in each one of the tables for the three years, aside from pounds and revenue, was arrived at.

TABLE 3-A.

Class Rates in Effect During the Year 1905 from Indianapolis.

RATES IN CENTS PER HUNDRED POUNDS.

To Stations and Groups Named.		Classes.					
	Miles.	*1*	*2*	*3*	*4*	*5*	*6*
Ben Davis	6	10	9	8	7	5	4
Bridgeport	9	12	11	10	8	6	5
Oakplain	11	..	..	..	..	..	..
Plainfield	14	15	13	11	9	6½	5½
Gibson	15	..	..	..	..	..	..
Cartersburg	17	..	..	..	..	..	..
Clayton	20	18	15	12	10	7	6
Pecksburg	23	..	..	..	..	..	..
Amo	25	20	18	14½	11	8	7
Coatesville	28	..	..	..	11	..	..
	30	..	..	16	..	..	7½
Fillmore	33	..	..	..	..	..	..
Alameda	36	..	..	..	..	..	..
Greencastle	39	22	20	17	12	9	8
Limedale	40	..	..	..	..	..	..
	43	..	20½	..	..	..	..
Hamrick	44	..	..	..	..	..	..
Reelsville	47	24½	22	19½	12½	9	8
Eagles	50	..	..	..	..	..	..
Harmony	54	..	..	..	..	..	..
Knightsville	55	..	..	..	..	..	..
Brazil	57	..	..	..	..	9	..
Turner	59	..	..	..	..	..	..
Staunton	61	25	22	19½	12½	9½	8
Cloverland	62	..	..	..	..	..	..
Seeleyville	65	..	..	..	..	..	..
Prairieton	71	..	..	..	..	..	..
Terre Haute	73	..	..	..	..	..	..
Macksville	75	..	..	..	..	..	..
Liggett	77	..	..	..	..	..	..
Nelson	79	..	..	..	..	..	..

It is to be noted that the average per ton and per cwt. in the table above for the first class freight gives a figure that is higher than the first class rate charged by the Vandalia to any point between Indianapolis and the Illinois State line, but Mr. Buchanan has not testified about rates any higher than first class, and it is generally known to those familiar with rates that there are 1½ times and double first class rates. This discrepancy is attributable to the fact that the revenue on classes higher than first class have been included in the revenue reported by the witness as having been derived from first class freight. We have therefore estimated the haul of first class freight to be the same as that of second class.

Without conflict the evidence tends to show, or shows, the truth of each of the following numbered propositions, as we will point out in each instance immediately following the proposition.

1st. Under complainant's rates of charges during the year 1905, the average earnings per ton per mile upon the classified freight covered by the order of the Railroad Commission in question were more than ten times as much as the average earnings per ton per mile on all of the appellee's lines exclusive or inclusive of the Terre Haute and Peoria.

The average earnings per ton per mile on all of appellee's lines, exclusive of the Terre Haute and Peoria road, were 74-100 of a cent; inclusive of said

last named line 73-100 of a cent; and on said last named line 64-100 of a cent. (See p. 203.)

As to the classified freight covered by the order of the commission in question here, the average earnings per ton per mile were 7.85 cents. (See "Table 1—1905," p. 50 of this brief.)

2d. The element of freight traffic, covered by the order of the Railroad Commission in question, is but a small fraction of the entire freight business of the St. Louis division of appellee's line, to wit, but 3-10 of 1 per cent. thereof.

The total earnings from freight on the St. Louis division of appellee's line for the year 1905 are shown in three items, the aggregate of which is $2,854,611.87 (p. 72). The average earnings per ton per mile upon all lines of the appellee, exclusive of the Terre Haute and Peoria, were for said year 74-100 of one cent (p. 203). Dividing the former number by the latter gives the total ton miles of haul on said division as 385,758,321.

As to the classified freight covered by the order of the commission in question here, the total ton miles of haul were 1,160,775.96. (See "Table 1—1905," p. 50 of this brief.) The latter number of total ton miles of haul is of the former 3-10 of 1 per cent.

3d. Upon the basis of the only estimate given in the evidence of the cost of transporting classified freight, covered by the order of the Railroad Commission, or of the ratio thereof to any other quantity

or number, the expense incident or attributable to the transportation of said classified freight is of the earnings thereon no more than 26.27 per cent. under the complainant's schedule of rates.

W. C. Downing, superintendent of the St. Louis division of appellee's railroad (p. 98), testifies that in connection with complainant's counsel he made an estimate of the ratio of cost to earnings for the year 1904, upon the classified freight covered by the commission's order, for purposes of representation to the Railroad Commission (pp. 116, 117 and 118). He states, touching the year 1904, "that if all of the freight on the road had been handled on the basis of this increased cost as to local freight, the expenses would have been increased 14.6 per cent."

And complainant's counsel follows that testimony with this statement:

"And that makes the local expense 90 per cent. instead of 76 per cent., but neither of us were in love with that conclusion, because it did not seem of any particular value in determining the actual question we were trying to get at, namely, the cost of handling local traffic as compared with through." (p. 118.)

For neither of the years 1904, 1905, or 1906 is the total tonnage or total tonnage haul upon the appellee's line from Indianapolis to the State line, or upon the St. Louis division of said line, separately shown in the evidence, nor is the total expense of freight traffic shown as to said part of said line or division separately. These things are shown, how-

ever, in the consolidated statement of all the lines, except the Terre Haute and Peoria, and separately of that line (p. 203). That statement shows for the year 1905, among other things, the following:

Total freight earnings..... $4,675,741.62
Number of tons carried..... 7,174,257
Average earnings per ton per mile..74-100 of a cent
Average cost per ton per mile.....59-100 of a cent

Fifty-nine one hundredths of a cent, the average cost per ton per mile, is of 74-100 of a cent, the average earnings per ton per mile, 79.73 per cent., thus showing that the percentage of expenses to earnings on freight was 79.73 per cent. If this per cent. be increased by the amount given by the witness Downing, to wit, 14.6 per cent., it gives 94.33 per cent. as the percentage of expenses to earnings if all freight were handled on the basis of local freight.

Ninety-four and thirty-three one hundrdeths per cent. of the freight earnings above given would be $4,410,627.07, the total cost of freight handled on the basis of local freight.

The average revenue per ton upon the six classes of classified freight, covered by the order of the Railroad Commission, was $2.34. (See "Table 1, 1905," p. 50 of this brief.) If the total tons above given, 7,174,257, were carried at the rate per ton last named, it would make the total earnings of freight $16,787,761.38, of which the total cost of freight above given, to wit, $4,410,627.07, is 26.27 per cent., which accordingly would be the per cent. to earnings

upon all freight if all were carried on the basis of the classified freight in question.

4th. If only that part of the classified freight in question, covered by the order of the Railroad Commission, which is not carried in carload lots, were considered, then, upon the basis of the estimate made by the witness Downing, the ratio of expense to earnings thereon would be no more than 17.41 per cent.

The witness, Edward F. Graham, is freight agent of the appellee company, has general supervision of matters connected with the freight station at Indianapolis (p. 134). He testifies that all of the classified freight that passes over the platform and is handled by the freight handlers in the depot belongs either to the 1st, 2d, 3d or 4th classes of freight; "that 5th and 6th class freight is always carload lots and loaded by the shipper" (p. 160). By reference to Table 1, 1905 (p. 50 of this brief), it will be seen that freight of the 5th and 6th classes is no insignificant portion of the whole of the classified freight in question; for instance, while the total tons of the six classes were 38,888.1635, it will be found, on slight computation, that more than half of that tonnage, to wit, 24,840.1545 tons, is freight of the 5th and 6th classes, and of the total revenue, $91,067.56, the following part, to wit, $42,146.67, is revenue from freight of the 5th and 6th classes. If the 1st, 2d, 3d and 4th classes only be considered, the average revenue per ton is $3.59, instead of $2.34 per ton. If the total tons of freight hauled, mentioned under

the proposition last above, were multiplied by $3.59, and the total earnings ascertained upon that basis, the total expense to earnings upon the basis of the estimate made by the witness Downing, the ratio of expense to earnings for the four classes of classified freight, would be 17.41 per cent., and no more.

5th. The rates of appellee for classified freight, upon said St. Louis division of its road, are from 40 to 100 per cent. higher than that of other roads or divisions out of the city of Indianapolis, as tables giving the comparison in evidence show. (pp. 204-5-6-7.)

To give but one example and illustration of these tables: For instance, the distance from Indianapolis to Taylorsville, Indiana, on the Pennsylvania road is 35 miles; to Fillmore, on the St. Louis division in question, is 32.6. To these points respectively the rates in cents on classified freight are as follows:

	Classes.					
	1	*2*	*3*	*4*	*5*	*6*
Pennsylvania Line	8½	8½	8	7½	6½	5½
St. Louis Division	22	20	17	12	9	8

And similarly is shown the excessive rates on the line in question, as compared with the other lines out of said city of Indianapolis. (See pp. 205-6-7-10-11.)

6th. The evidence does not sustain the estimate to the effect that the cost of handling freight over the platform at Indianapolis is 70.4 cents per ton.

The estimate on page 124, made by the witness, D. F. Saur, chief claim clerk in the general freight office of the Vandalia Railroad at St. Louis, is not

sustained by the evidence. The witness in the estimate gives the total cost of office force at $16,709, or a cost per ton of 28.4 cents; but stated (p. 127) that he did not know what proportion of the labor of those clerks was given foreign or intrastate traffic, or what proportion of their time was given domestic or local traffic; and further stated (Rec., p. 128) that he merely divided the total cost of office force by the 58,000 pounds of local freight handled, and that he would not say that the cost of clerks for domestic tonnage would be the result of dividing 58,000 tons into $16,000.00 if only one-fourth of the time of those clerks was devoted to domestic traffic; and that he did not know whether or not more service was required of a clerk in foreign than in domestic traffic; and stated (p. 130) that in the clerical cost at the freight house there is included in the estimate the clerical labor of clerks incident to the handling of 12,852 cars into and out of the freight house, but that he didn't understand that the same clerks devote their time and are paid for the purpose of looking after the 145,998 cars, or a good portion of them, handled in and out of Indianapolis in freight trains. He used an estimate of cars per year in and out of the freight house of 12,852. The witness Graham (p. 149) stated that there were 9,994 cars inbound and outbound and that the estimated cars east-bound each day, which for the year would amount to 1,530 cars, makes a total of 11,524 cars in and out of the freight station, or 1,328 less than the number given by the witness Saur. Applying some

of the items of expense of the station (Rec., p. 121), witness Saur charged 8.8 per cent. of 94.9 per cent. and 8.8 per cent. of 79.6 per cent. of the various expenses, because of his estimate of 12,852 cars per year in and out of the freight house. The witness Graham, under whose immediate supervision the clerks at the freight house are, testifies (p. 139) that their duties included the labor of looking after inbound and outbound freight in less than carload lots, and also included the duty of looking after carload lots in and out of Indianapolis, and after describing the duties and expenses of the station force (pp. 140-151) testified (p. 156) that he thought 20 per cent. of this expense of office force should be charged to platform freight, making the charge 5.6 cents instead of 28.4 cents, as given in Saur's estimate, and by this alone reducing Saur's estimate 22.7 cents per ton. Graham testified (p. 143) that any perishable goods that should be inspected after arrival were given a thorough inspection before the assignee begins to unload or haul his freight away, and that this inspection is by some one in connection with the freight department, not necessarily through the office force, which means the platform force. Although the evidence shows that 20 per cent. (Rec., p. 156) of the clerical force was devoted to platform freight, witness Saur has charged 100 per cent. of the station supplies as platform expenses (p. 125) and likewise 100 per cent. of the taxes, although the building on which the taxes are paid is used for the clerical work incident to the carload freight as well

as the platform freight. (Rec., p. 164.) The witness Downing, superintendent of the road, states (p. 103) that at the terminals about 50 per cent. of the expense should be charged to local and about 50 per cent. to through, and gives as his reason for making that estimate:

"The freight house force, laboring forces, are assigned principally to the handling of local freight. The clerical forces are more equally divided between the two, and without being able to figure it out accurately, it seems to be the opinion of our agents, and from our records, that the estimate of 50 per cent. seems to be fair."

Had it been true that the cost of handling freight over the platform was 70.4 cents per ton, it would be of no controlling influence under the state of evidence in this cause, but it is not true in the light of all of the evidence.

There is nothing in the evidence, aside from what we have given, that throws any light upon the question of the cost incident to the transportation of the classified freight in question, or of the ratio of said cost to earnings thereon. There is nothing, therefore, to show that the rates established by the order of the Railroad Commission are either confiscatory, unjust or unreasonable. On the other hand, the evidence corroborates the presumption that they are just and reasonable. We respectfully submit that it was error to find in the Master's report that the

rates mentioned as established by the commission were confiscatory, unjust and unreasonable, and that it was error to find in the cause that the equities were with the complainant or enter the decree rendered in this cause, and appellants respectfully ask that said cause be in all things reversed.

THOMAS M. HONAN,
Attorney-General of Indiana.

J. E. McCULLOUGH,
BERNARD KORBLY,
WILLARD NEW,
Attorneys for Appellants.

APPENDIX.

The following are tables for the years 1904 and 1906, touching the classified intrastate freight in question, which tables are derived from the evidence in the same manner as the tables for 1905, given on pages 50, 51, 52 and 53 of this brief, and which are explained on pp. 48, 49, 54 and 55.

TABLE 1, 1904.

CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1904.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	5,835,066	2,917.5	$14,627 70	$5 01	30	87,525	16.71
2	2,813,747	1,406.8	5,337 41	3 79	30	42,204	12.64
3	10,963,271	5,481.6	16,873 24	3 08	30	164,448	10.26
4	5,398,290	2,699.1	5,784 52	2 14	22	59,380	9.74
5	39,751,349	19,875.6	34,385 50	1 73	30	596,268	5.76
6	3,730,942	1,865.4	2,795 43	1 50	30	55,962	4.99
Total	68,492,665	34,246.3	$79,805 80			1,005,787	
Average				$2 33	29		7.93

TABLE 2, 1904.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1904.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	5,835,066	2,917.5	$8,571 45	$2 94	30	87,525	9.79
2	2,813,747	1,406.8	3,216 51	2 29	30	42,204	7.62
3	10,963,271	5,481.6	10,214 10	1 86	30	164,448	6.21
4	5,398,290	19,875.6	24,528 07	1 23	30	596,268	4.11
6	3,730,942	1,865.4	1,786 50	96	30	55,962	3.19
Total	68,492,665	34,246.3	$52,222 12			1,005,787	
Average				$1 52	29		5.19

TABLE 3, 1904.

Classified Freight, Originating at Indianapolis, Indiana, and Ending at Stations in said State, on the St. Louis Division of the Vandalia Railroad, for the Year 1904.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	3,909,146	1,954.6	$10,051 83	$5 14	30	58,638	17.14
2	1,773,083	886.5	3,466 12	3 91	30	26,595	13
3	8,042,417	4,021.2	12,693 88	3 15	30	120,636	10.5
4	3,265,131	1,632.5	3,485 66	2 14	22	35,915	9.71
5	5,873,164	2,936.5	5,454 79	1 86	57	167,380	3.25
6	1,416,492	707.25	1,052 24	1 48	30	21,247	4.92
Total	24,279,433	12,139.7	$36,204 52			430,412	
Average				$2 98	35		8.41

TABLE 4, 1904.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AT INDIANAPOLIS, INDIANA, AND ENDING AT STATIONS IN SAID STATE, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1904.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	3,909,146	1,954.6	$6,030 80	$3 08	30	58,638	10.28
2	1,773,083	886.5	2,159 00	2 44	30	26,595	8.12
3	8,042,417	4,021.2	7,896 45	1 96	30	120,636	6.55
4	3,265,131	1,632.5	2,382 99	1 46	22	35,915	6.64
5	5,873,164	2,936.5	4,182 92	1 42	57	167,380.5	2.50
6	1,416,492	708.25	695 82	98	30	21,247.5	3.27
Total	24,279,433	12,139.7	$23,347 98			430,412	
Average				$1 92	35		5.42

TABLE 1, 1906.

CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1906.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	6,735,894	3,367.947	$17,309 57	$5 14	30	101,038.41	17.31
2	3,124,772	1,562.386	5,939 85	3 80	30	46,871.58	12.67
3	12,558,097	6,279.048	19,668 21	3 13	30	188,371.44	10.44
4	6,802,485	3,401.243	7,375 82	2 17	28	95,234.80	7.74
5	49,175,432	24,857.716	42,500 97	1 73	30	737,631.48	5.76
6	12,484,876	6,242.438	8,446 74	1 51	30	187,273.14	5.04
Total	90,881,556	45,440.778	$102,241 16			1,356,420.85	
Average				$2 25	29.8		7.54

TABLE 2, 1906.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AND ENDING AT STATIONS IN INDIANA, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1906.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	6,735,894	3,367.947	$9,783 82	$2 90	30	101,039.41	9.68
2	3,124,772	1,562.386	3,582 35	2 29	30	46,871.58	7.64
3	12,558,097	6,279.048	11,864 88	1 89	30	188,371.44	6.30
4	6,802,485	3,401.243	4,965 66	1 46	28	95,234.80	5.21
5	49,175,432	24.587.716	30,608 91	1 24	30	737,631.48	4.15
6	12,484,876	6,242.438	6,131 37	98	30	187,273.14	3.27
Total	190,881,556	45,440.778	$66,936 99			1,356,420.85	
Average				$1 47	29 8		4.93

TABLE 3, 1906.

CLASSIFIED FREIGHT, ORIGINATING AT INDIANAPOLIS, INDIANA, AND ENDING AT STATIONS IN SAID STATE, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1906.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	4,456,371	2,228.1855	$11,745.81	$5 27	32	71,301.93	16.47
2	2,003,666	1,001.833	3,905 17	3 90	32	32,058.6	12.2
3	8,759,175	4,379.5875	14,088 32	2 22	32	140,146.8	10.05
4	4,430,861	2,215.4305	4,801 64	2 17	28	62,032	7.74
5	6,855,394	3,427.697	6,301 56	1 84	57	195,378.7	3.23
6	3,454,245	1,727.1225	26,440 70	1 53	30	51,813.7	5.10
Total	29,959,712	14,979.856	$43,487 20			552,731.73	
Average				$2 91	36.9		7.87

TABLE 4, 1906.

APPLYING RATES ORDERED BY THE RAILROAD COMMISSION TO CLASSIFIED FREIGHT, ORIGINATING AT INDIANAPOLIS, INDIANA, AND ENDING AT STATIONS IN SAID STATE, ON THE ST. LOUIS DIVISION OF THE VANDALIA RAILROAD, FOR THE YEAR 1906.

Class.	*Pounds.*	*Tons.*	*Revenue.*	*Revenue per Ton.*	*Average Miles Hauled.*	*Total Ton Miles of Haul.*	*Revenue per Ton per Mile, in Cents.*
1	4,456,371	2,228.1855	$6,661 34	$2 99	32	71,301.93	9.34
2	2,003,666	1,001.833	2,411 29	2 41	32	32,058.6	7.52
3	8,759,175	4,379.5875	8,766 67	2 00	32	140,146.8	6.26
4	4,430,861	2,215.4305	3,275 05	1 48	28	62,032	5.28
5	6,855,394	3,427.697	4,723 25	1 38	57	195,378.7	2.42
6	3,454,245	1,727.1225	1,745 86	1 01	30	51,813	3.37
Total	29,959,712	14,979.856	$27,583 46			552,731.73	
Average				$1 84	36.9		4.99

Office Supreme Court, U. S.
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— IN THE —

Supreme Court of the United States

OCTOBER TERM 1912.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

No. 31

WILLIAM J. WOOD, JOHN F. McCLURE, FRANK E. PAYNE, GUSTAV A. SCHNULL, WILLIAM J. GRIFFIN and GEORGE G. GRIFFIN,

Appellants,

v.

VANDALIA RAILROAD COMPANY,

Appellee.

BRIEF FOR APPELLEE.

JNO. G. WILLIAMS,
Attorney for Appellee.

F. D. McKENNEY,
D. P. WILLIAMS,
S. O. PICKENS,
Of Counsel.

Central City Publishing Co., Printers, Indianapolis.

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Appellants,
v.
VANDALIA RAILROAD COMPANY,
Appellee.
} No. 90.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

On the 14th day of December, 1906, the Railroad Commission of Indiana, on the petition of Schnull & Co. a partnership composed of Gustav A. Schnull, William J. Griffin, and George G. Griffin, three of the appellants, made an order effective February 1, 1907, establishing the maximum rates which could be charged and collected by Vandalia Railroad Company, appellee, on all traffic em-

braced within the six classes of the Official Classification, moving over that portion of the line of railroad of the appellee lying between Indianapolis, Indiana, and the line dividing the states of Indiana and Illinois, a distance of about eighty (80) miles, and which had its origin and destination on that small portion of appellee's entire railroad.

On January 22, 1907, before this order became effective, Vandalia Railroad Company, appellee, filed its bill in the Circuit Court of the United States for the District of Indiana, naming as defendants the persons who then composed the Railroad Commission of Indiana, James Bingham, Attorney General of the State of Indiana, Elliott R. Hooton, Prosecuting Attorney in and for the County of Marion, State of Indiana, and Gustav A. Schnull, William J. Griffin, and George G. Griffin, composing the firm of Schnull & Co., on whose petition the order of the Railroad Commission of Indiana was entered, and invoking the protection of the fourteenth amendment, prayed that the order of the Commission be declared void and of no force or effect, on the ground that the rates established by the Commission would not yield sufficient revenue to pay the actual cost of handling and carrying the traffic covered by the order.

The answers of the defendants and the replication of the complainant were filed in due season, and on the 8th day of October, 1907, the case was referred to a Master, with directions to take the testimony and report the same to the court, with his findings of facts and conclusions of law.

On March 6, 1909, the Master filed his report, finding that the schedule of rates prescribed by the order of the Railroad Commission of Indiana, if enforced, would reduce the earnings of Vandalia Railroad Company from the

traffic affected by the order below operating expenses, and that the enforcement of the order of the Commission would therefore deprive that company of its property without due process of law within the meaning of the Constitution of the United States and in violation of its provisions. Numerous and voluminous exceptions to the report were filed by the defendants in the cause, but they were all overruled, and on June 29, 1909, the final decree was entered, from which this appeal is taken. By the terms of the decree the order of the Railroad Commission was set aside and ordered to be held void and of no force or effect, and the defendants were perpetually enjoined from enforcing or attempting to enforce the order of the Commission, either by suits for penalties, or actions for damages, on account of any violation of the order.

There are twenty-one assignments of error, but only ten, being those numbered IV, V, VI, VII, IX, X. XI, XII, XIII and XIV, are mentioned in the original brief for appellants under the head of "Specification of Errors Relied Upon by Appellants."

The fourth assignment of error says the final decree was erroneous in the absence of any proof that Vandalia Railroad Company, at any time prior to the decree, made any test or trial of the maximum rates fixed by the Commission for the transportation of classified freight over its line of railroad between Indianapolis and the Illinois State line.

The fifth assignment of error in effect says that the court erred in finding and decreeing that if Vandalia Railroad Company should be required to comply with the order of the Railroad Commission it could not obtain revenue sufficient to reimburse it for its actual outlay in handling and carrying the traffic covered by the order of the Commission.

The sixth assignment of error simply states that the rec-

ord shows the complainant was not entitled to the final decree of injunction, and that such injunction should have been denied.

The seventh assignment of error is that the court erred in holding and decreeing that the complainant was entitled to the injunction as it appears in the final decree.

Each of the three assignments of error last mentioned probably lacks the particularity required by Rule 21 of the rules of this court, but they and the fourth assignment of error will be treated as presenting in a general way the contention that the decree of the court below is not sustained by sufficient evidence and is contrary to law.

The ninth assignment of error is that the court erred in overruling the exception numbered six to the Master's report; the tenth, that the court erred in overruling exception numbered ten to the Master's report; the eleventh, that the court erred in overruling exception numbered eleven to the Master's report; the twelfth, that the court erred in overruling exception numbered twelve to the Master's report; the thirteenth, that the court erred in overruling exception numbered thirteen to the Master's report, and the fourteenth, that the court erred in overruling exception numbered fourteen to the Master's report.

All of these exceptions to the Master's report present in different ways a single question, viz., the correctness of the method adopted by the Master in ascertaining the cost of handling the traffic covered by the Commission's order. The method adopted by the Master and approved by the court below was identical with the one adopted by this court in *Smyth v. Ames*, 169 U. S. 466, and in this respect, as in all other respects, the case at bar was heard and determined in strict accordance with that decision.

Vandalia Railroad Company, the appellee, became a con-

solidated corporation January 1, 1905, pursuant to an agreement of consolidation executed by five railroad companies. One of these was The Terre Haute & Indianapolis Railroad Company, owning a railroad extending from Indianapolis to the line dividing the states of Indiana and Illinois, and another was St. Louis, Vandalia & Terre Haute Railroad Company, owning a line of railroad extending from the line dividing the states of Indiana and Illinois to East St. Louis, Illinois—these two railroads forming a continuous line between Indianapolis and East St. Louis, passing through Terre Haute, Indiana. Another of the consolidating companies owned a line of railroad from Terre Haute, Indiaan, to South Bend, Indiana, passing through Logansport, Indiana; another owned a line of railroad from Logansport, Indiana, to Butler, Indiana; another owned a line of railroad from Indianapolis, Indiana, to Vincennes, Indiana.

The order of the Commission covered only the line of railroad extending from Indianapolis to the Illinois line and which, previous to the consolidation, was owned by The Terre Haute & Indianapolis Railroad Company; and affected only the traffic moving over that line embraced within the six classes of the Official Classification, and which had its origin and destination wholly on that line. Following the decision in *Smyth v. Ames*, 169 U. S. 466, it became necessary to ascertain and determine,

(a) What revenue had been derived from the traffic embraced within the order of the Commission for each of the years 1904, 1905 and 1906—being the three years immediately preceding the order of the Commission taking effect February 1, 1907;

(b) What it had cost to earn that revenue in each of those three years;

(c) What the revenue for each of those years would

have been on the traffic which had been actually handled if the rates ordered by the Commission had been in force and those rates had been charged and collected.

Prior to the consolidation the accounts kept by The Terre Haute & Indianapolis Railroad Company showed all the earnings and operating expenses of the line of railroad of that company extending from Indianapolis to the Illinois State line for the year 1904, but did not show separately the earnings derived from the classified traffic alone, nor did they show, nor was it possible to ascertain from them exactly what the cost of moving that traffic was separate and apart from the general cost of moving all traffic over that line of railroad. The percentage of all expenses to all earnings for that year, however, could be definitely and exactly ascertained and determined.

After January 1, 1905, when the consolidation became effective, the accounts were so kept as to show for each of the years 1905 and 1906 the entire earnings of what was called the "St. Louis Division"—an operating division made up of the two lines of railroad owned respectively, prior to the consolidation by The Terre Haute & Indianapolis Railroad Company and St. Louis, Vandalia & Terre Haute Railroad Company, and which formed a continuous lien between Indianapolis, Indiana, and East St. Louis, Illinois. These accounts, however, did not show how much of the earnings of the whole division was derived from traffic on the line of railroad between Indianapolis and the Illinois line which was covered by the order of the Commission, nor did they show the cost of making those earnings separate and apart from the general cost of making all earnings on that division, but from them the percentage of all expenses to all earnings on the St. Louis Division could be definitely and exactly ascertained and determined.

It was possible to ascertain exactly what the earnings were for each of the years 1904, 1905 and 1906, from the traffic covered by the order of the Commission, and this was done and the amount of earnings for each of those years shown by the evidence.

It was also shown by the evidence that for the year 1904 the percentage of all expenses to all earnings on what was formerly the Terre Haute & Indianapolis Railroad, extending from Indianapolis to the Illinois line and being the railroad covered by the Commission's order, was at least seventy-four and 50-100 per cent. (74.50%); that for the year 1905 the percentage of all expenses to all earnings on the St. Louis Division, being the line of railroad made up of the Terre Haute & Indianapolis Railroad and the St. Louis, Vandalia & Terre Haute Railroad and forming a continuous line between Indianapolis, Indiana, and East St. Louis, Illinois, was seventy-three and 3-100 per cent. (73.03%), and for the year 1906 was seventy-two and 64-100 per cent. (72.64%). On page sixteen of the record where these percentages appear, the percentage for 1904 as printed is seventy-two and 64-100 per cent. (72.64%), but it is apparent that this is a typographical error. The earnings for that year as given on page fifteen are $79,803.-80, and the expenses for that year given on page sixteen are $59,453.83. The percentage of expenses as thus given to the earnings as thus given is seventy-four and 50-100 per cent. (74.50%) instead of seventy-two and 64-100 per cent. (72.64%), and the former is the percentage stated by the witness, W. S. Roney, in his evidence appearing on page sixty-eight of the record.

The expense of handling the same traffic would, of course, have been the same whether the Railroad Company's rates were applied to the traffic or whether the Commission's rates had been applied; and having ascertained

what the earnings would have been for each of the years 1904, 1905 and 1906, had the rates ordered by the Commission been charged, and the percentage of expenses to earnings for each of those years having also been ascertained, it only remained to compare what the earnings for each year under the Commission's rates would have been with the expenses for each year. This was done, with the result that in each year the earnings were found to be less than the operating expenses—the deficit for each year being as follows:

1904..... $7,231,71;
1905..... 6,427.51;
1906..... 7,330.98.

BRIEF AND ARGUMENT.

I.

The gross revenue actually received from handling the traffic covered by the Commission's order was properly ascertained and correctly reported by the Master.

This revenue as reported by the Master appears on page fifteen of the re[illegible]d, and is as follows:

1904..... $79,803.80;
1905..... 91,067.56;
1906..... 102,241.15.

John H. Buchanan was the only witness who testified on this point. On page seventy-eight of the record he gives the amounts reported by the Master as being the revenue derived during the years 1904, 1905 and 1906 from handling all freight embraced within the six classes and which started and ended on the line between Indianapolis and the Illinois state line.

Mr. Buchanan also testified that he obtained these figures from the way-bills of the company, and how he did this is explained on pages eighty and eighty-one of the record. The necessity for going to the way-bills to ascertain the revenue is explained by the witness, W. S. Roney, who testified (see pages sixty-four and sixty-five of the record) that when the books were finally made up they would not show the revenue derived from the traffic covered by the order of the Commission separate and apart from the revenue derived from the other traffic that moved wholly within the state, nor from the traffic which moved partly within the state and partly without, and that the revenue derived from the traffic covered by the order of the Commission could only be ascertained by an examination of the way-bills and making the necessary separation.

The correctness of the amounts given by Mr. Buchanan is not questioned in any way, and it was not possible under the evidence for the Master to find any other amounts than those he reported.

The propriety of ascertaining what the revenue was for each of the three years immediately preceding the taking effect of the Commission's order is expressly recognized in *Smyth v. Ames, supra*, on page 528, where it is said:

"The first and most important contention of the plaintiffs is that, if the statute had been in force during any one of the three years preceding its passage, the defendant companies would have been compelled to use their property for the public substantially without reward or without the just compensation to which it was entitled. We think this mode of calculation for ascertaining the probable effect of the Nebraska statute upon the railroad companies in question is one that may be properly used."

II.

The gross revenue that would have been received during each of the years 1904, 1905 and 1906 from handling the traffic covered by the Commission's order had the rates ordered by the Commission been applied to that traffic was properly ascertained and correctly reported by the Master.

This revenue as reported by the Master appears on page sixteen of the record, and is as follows:

1904.....	$52,222,12;
1905.....	60,079.13;
1906.....	66,936.99.

John H. Buchanan is again the only witness who testified on this subject. On page seventy-eight of the record he gives the figures reported by the Master, and on pages ninety and ninety-one of the record he explains how he obtained those figures. For instance, he found out from the way-bills what first-class freight had been shipped from Indianapolis to each station between Indianapolis and the Illinois line and the revenue that had been earned on it. If the rate actually applied from Indianapolis to a certain station was ten cents per hundred and the Commission's rate from Indianapolis to that same station was eight cents per hundred, the Commission's rate was eighty per cent. of the rate actually applied and the revenue under the Commission's rate would have been eighty per cent. of the revenue actually earned. He applied this same method to the freight in each of the six classes moving to and from every station on the line of railroad covered by the order of the Commission.

The correctness of the amounts thus furnished by Mr. Buchanan is not questioned in any way, and it was not

possible under the evidence for the Master to find any other amounts than those he reported.

The reduction in revenue that would have resulted from the enforcement of the Commission's order was 34.50 per cent. for the year 1904, 34 per cent. for the year 1905, and 34.50 per cent. for the year 1906, and the Master so found and reported.

III.

The method adopted by the Master for ascertaining the cost of earning the revenue that was actually earned during the years 1904, 1905 and 1906 was entirely proper and the only method available for ascertaining that cost.

The Nebraska law which was attacked in *Smyth v. Ames, supra,* took effect August 1, 1893. It adopted a classification and prescribed maximum rates for all the freight embraced within the classification. Of course, the law applied only to local freight, as it was called, being freight that started and ended in the state. In order to ascertain what it cost each company involved to obtain the revenue it actually received during each of the three years immediately preceding the taking effect of the law from freight that started and ended in the state, the percentage of operating expenses to earnings on all business, through and local, done by the company within the state, including passenger business, was taken as the basis, and to this percentage was added ten per cent. to represent the extra cost incurred in doing local business as compared with what was called through business.

In *Smyth v. Ames, supra,* on page 534, it is said:

"Take the case of the Burlington road, from July 1, 1890 to June 30, 1891. Looking at the entire business done on it during that period within the limits of the state, we find that the percentage of operating expenses to earnings

on all business—which, as stated, does not include the extra cost of local business—was 66.24. Add to this the extra cost of local business, estimated at at least ten per cent., and the result is that, under the rates charged during the period stated, the cost to the Burlington Company of earning $100 would have been $76.24. Now, if the reduction of 29½ per cent. made by the act of 1893 had been in force prior to July 1, 1891, the company would have received $70.50 as against $100 for the same service, showing that in that year the operating expenses would have exceeded the earnings by $5.74 in every $100 of the amount actually received by it."

Again, on page 535, it is said:

"In the year ending June 30, 1891, under the rates then in force, the Burlington Company received $1,066,871 for tons carried locally. If the business had been done under the rates prescribed by the act of 1893, it would have received 29½ per cent. less, that is, only $752,145 or $314,726 less than it did receive. The percentage of expenses to earnings, including the extra cost of local business, was 76.24; that is, it cost $813,382 to earn $1,066.871. So that the difference between $813,382 and $752,145 shows that, if the rates prescribed by the statute of 1893 had been in force during the year ending June 30, 1891, the amount received would have been less than the operating expenses of the Burlington Company by $61,237."

In the case at bar the order of the Commission covered only the line of railroad extending from Indianapolis, Indiana, to the line dividing the states of Indiana and Illinois. The percentage of operating expenses to earnings on all business done on that line of road for the year 1904 appears in the evidence of W. S. Roney, found on page 68 of the transcript. The fiscal year of The Terre Haute & Indianapolis Railroad Company, which then owned and was operating the property ended October 31, 1904, and was not, therefore, coincident with the calendar year. After the consolidation, which became effective January 1, 1905, the fiscal year of the appellee was made co-

incident with the calendar year. Mr. Roney testified (record page 68) that for the fiscal year ending October 31, 1904, the ratio of operating expenses to earnings of the road between Indianapolis and the Illinois state line was 76.4 per cent. and that for the two months ending December 31, 1904—being the two months immediately preceding the consolidation, the ratio of operating expenses to earnings of that road was 74.5 per cent. The Master adopted the ratio for the last two months of the calendar year, which was the lower of the two ratios given by Mr. Roney.

On page 69 of the record Mr. Roney gives the ratio of operating expenses to earnings on the St. Louis Division for the year 1905 as 73.03 per cent., and on page 73 he gives the ratio of operating expenses to earnings on that division for the year 1906 as 72.64 per cent. The line of railroad from Indianapolis to the Illinois state line for which the ratio of operating expenses to earnings for 1904 was given, together with the line of railroad extending from the Illinois state line to East St. Louis, Illinois, constituted the "St. Louis Division." The manner in which the accounts were kept after the consolidation made it impossible to show separately the earnings and expenses of that portion of the division lying between Indianapolis and the Illinois state line, but as the earnings and expenses of the entire division could be shown and as the line between Indianapolis and the Illinois state line was a part of that division, it was entirely proper for the Master to take the percentages of expenses to earnings of that division for the years 1905 and 1906; particularly as Mr. Roney, on page 93, of the record, testified that the cost of transporting freight in Illinois and the cost of transporting the same freight in Indiana would be substantially the same. Then too, the percentage of operating expenses to earnings on the St. Louis Division was less for each of the years 1905 and 1906

than it was on the road between Indianapolis and the Illinois line for the year 1904, and it is therefore apparent that the percentage was reduced rather than increased by including the line in Illinois in the accounts for those years. Following the plan adopted by the late Mr. Justice Harlan, in the quotations already given from the opinion delivered by him in *Smyth v. Ames, supra,* it may be said that looking at the entire business done during the year 1904 on the line of railroad extending from Indianapolis to the line dividing the states of Indiana and Illinois, we find that the percentage of operating expenses to earnings on all business, not allowing anything for the extra cost of local business, was 74.5. The result, then, is that under the rates charged during that year the cost of earning $100.00 would have been $74.50. Now, if the reduction of 34.50 per cent. made by the Commission's order had been in force during that year, there would have been received $65.50 as against $100.00 for the same service, showing that in that year the operating expenses would have exceeded the earnings by $9.00 in every $100.00 of the amount actually received.

Again, for the year 1905, under the rates then in force appellee received $91,067.56 for handling the traffic affected by the order of the Commission. If the business had been done under the rates prescribed by the order of the Commission appellee would have received 34. per cent. less; that is, only $60,079.13, or $30,988.43 less than it did receive. The percentage of expenses to earnings that year was 73.03; that is, it cost $66,506.64 to earn $91,067.56, so that the difference between $66,506.64 and $60,079.13 shows that if the rates prescribed by the Commission's order had been in force during the year 1905 the amount received would have been less than the operating expenses by $6,427.51.

Stated in the same way, the result for the year 1906

would show the earnings for that year less than the expenses by $7,330.98.

It was shown by the testimony of Mr. Roney, beginning on page 65 and ending on page 68 of the record, that as to a number of items of expense charges could be made direct against freight service and passenger service. For instance, the wages of engineers, firemen, and train crews of freight trains could be charged directly to freight service, and the wages of the same class of employes on passenger trains could be charged to passenger service; but a large part of the expenses could not be directly distributed to either freight or passenger service. For instance, the maintenance of the roadbed used by both kinds of service could only be apportioned between the two services on some proper basis, and the basis used by Mr. Roney was what is called the train mileage basis; that is to say, the expenses that could not be distributed directly to either freight or passenger service would be divided between the two services on the basis of the miles made by trains in each service.

When it comes to determining the cost of handling some particular freight selected out of all the freight handled, the use of the basis of percentage of expenses to earnings seems to be the only one available. It would be impossible to determine exactly how much of the total freight expense should be charged against say a box of merchandise shipped from Indianapolis to the line dividing the states of Indiana and Illinois, and it would be equally impossible to show separately the exact cost of handling classified freight alone between those points and leave out of consideration the large business done in the way of handling commodities that are not embraced within the classification.

Because of these and other difficulties that might be mentioned, there was no way of ascertaining, even approx-

imately, the cost of handling the traffic covered by the order of the Commission, except to follow the plan approved by this court in *Smyth v. Ames, supra,* and take the ratio of all expenses to all earnings.

Doubtless with respect to local classified freight this percentage of all expenses to all earnings shows a cost much below the actual cost. It is, of course, an average made up of the cost of handling all the different kinds of freight, local and through, class freight and the commodities not embraced within the classification.

Take on the one hand a commodity like coal, which is handled in carload lots and is loaded by the shipper on his own track at his own expense and unloaded by the consignee on his own track at his own expense. Then take, on the other hand, local class freight in less than carload lots, which is delivered by the shipper at the freight house and there loaded by the Railroad Company at its expense and unloaded after a short haul into a freight house likewise at the expense of the Railroad Company. It is apparent that the cost of handling coal is relatively low and the cost of handling the local class freight relatively high. These two costs, however, together with the varying cost of handling all the other kinds of freight go to make up the percentage of expenses to earnings, and the percentage thus obtaned is necessarily an average one, which represents less than the highest cost and more than the lowest.

W. C. Downing, a witness who testified before the Master, fully explained the high cost of handling the local class freight, and also the impossibility of ascertaining and stating separately the actual cost of handling only that kind of freight.

(Record pp. 98-107 and 115-118.)

It appears from his evidence that engineers and firemen, conductors and brakemen, handling local trains, received

higher wages than the employes in the same service who handled through trains, and that three brakemen were required on local trains as against two on through trains. All of this resulted in an increase of cost of handling the local trains as compared with the cost of handling through trains, which Mr. Downing stated was 52 per cent. in 1904, 60 per cent. in 1905, and 68.4 per cent. in 1906 so far as the wages paid were concerned.

Again, local freight engines consumed from 100 to 140 per cent. more coal per car mile than the engines in through freight service.

Again, the average number of loaded cars handled in the local freight trains was much less than that handled in through freight trains, and the load carried in each car was usually much less.

D. F. Saur was another witness who testified before the Master. His evidence begins on page 119 of the record and ends on page 133. He submitted an estimate of the cost of handling freight through the Indianapolis freight house of appellee, which shows the cost for the year 1905 to have been in round numbers 70 cents per ton, or 3½ cents per hundred. To this, of course, the cost of unloading and handling through the freight house at destination would have to be added. Mr. Saur found that the average load of the cars handled at the Indianapolis freight house during 1905 was 4.6 tons, and Mr. Downing gave the average load that year in local trains as 11.17 tons, and in through trains 18.38 tons.

In a percentage of all expenses to all earnings, passenger earnings and passenger expenses as well as freight earnings and freight expenses enter into the computation, and, of course, the percentage thus obtained could not properly be used to ascertain the cost of handling either the freight business or the passenger business if there was

a great disparity between the percentage of passenger expenses to passenger earnings and the percentage of freight expenses to freight earnings. If, on the other hand, these two percentages were approximately the same, then the percentage of all expenses to all earnings being an average of two quantities approximately equal, would represent with sufficient accuracy the cost of handling both the freight and passenger business.

Although the evidence does not show definitely what the passenger expenses, or the freight expenses were for either of the years 1904, 1905 and 1906, it is possible from the statements furnished by the witness, W. S. Roney, appearing on pages 69 to 77 of the record, to make estimates of them for the last two years on the St. Louis division.

The statement, beginning on page 69 of the record, shows the earnings and expenses of the St. Louis Division and the distribution of the expenses to the various accounts in the year 1905.

The total earnings shown on page 72 of the record were $4,750,811.13, of which $1,842,313.28 was earned by passenger trains, and $2,854,611.87 was earned by freight trains. An additional revenue of $53,885.98 was obtained from other sourses, but it can be left out of consideration without affecting in any way the general result.

The total operating expenses were $3,469,544.81, and were 73.03 per cent. of the total revenue. The expenses are distributed under the four general heads of Maintenance of Way and Structures, Maintenance of Equipment, Conducting Transportation, and General Expenses, and to the sum of all of the expenses distributed under those general heads taxes are added and included in the total operating expenses. Direct charges were made against either passenger or freight service only under the heads of Maintenance of Equipment and Conducting Transportation, and

these direct charges made against passenger service amount in the aggregate to $611,131.98, and against freight service to $1,093,582.64; thus making a total of direct charges of $1,704,714.62, and leaving items of expense not distributed to either service which amounted in the aggregate to $1,764,830.19.

The testimony of W. S. Roney, was to the effect that this undistributed expense was divided between freight and passenger service on the basis of train mileage. This mileage is not given in either of the statements, and while an estimate of it might be obtained by taking the amount paid to road enginemen and firemen in passenger and freight service, respectively, the result would not be near enough to the actual to be very satisfactory.

There is, however, another approved method of distributing expenses common to both freight and passenger service, and that is a distribution on the revenue basis. On the train mileage theory each service is supposed to be charged in proportion to the use made by it of the property used in common by both services. On the revenue basis each service is supposed to be charged in proportion to the value of the use it makes of the property used in common—this value being represented by the gross earnings derived by each service from its use of the property.

In 1905 the freight earnings were 61 per cent. and the passenger earnings 39 per cent. of the total transportation earnings, and if the undistributed expenses common to both freight and passenger service be distributed on this basis, the total freight expenses, including the direct charges were $2,170,129.06, and the total passenger expenses, including the direct charges were $1,299,415.75. This would make the freight expenses 76 per cent. of the freight earnings, and the passenger expenses 70 per cent. of the passenger earnings; and shows that the percentage

of 73.03 used by the Master gave too low a cost of handling the freight business.

The earnings for 1906, found on page 76 of the record, amounted to $5,480,094.77, and of this amount $2,090,783.80 was earned by passenger trains and $3,366,689.13 by freight trains. An additional revenue of $22,621.84 was derived from other sources, but that amount can be left out of consideration without affecting in any way the general result. This being done, the percentage of passenger expenses to passenger earnings and the percentage of freight expenses to freight earnings were 62 per cent. freight and 38 per cent. passenger.

The total operating expenses were $3,980,906.90, and of that amount $1,286,258.98 was charged directly to freight service and $761,161.21 to passenger service, making the total direct charges $2,047,420.19, and leaving undistributed $1,933,486.71.

If these undistributed expenses common to both freight and passenger service be distributed on the revenue basis of 62 per cent. for freight and 38 per cent. for passenger the total freight expenses, including the direct charges will be $2,485,020.74, and the total passenger expenses including the direct charges $1,495,886.16, and the total freight expense will be 74 per cent. of the total freight earnings, and the total passenger expense will be 72 per cent. of the total passenger earnings, as compared with the percentage of all expenses to all earnings used by the Master of 72.64 per cent.

It is true that these freight earnings and expenses and passenger earnings and expenses are for the entire St. Louis Division, but inasmuch as the line of railroad covered by the Commission's order is a part of that Division, the percentages that have been ascertained for the entire Division must necessarily be applicable to a part of the

Division. If it cost $73.00 to earn each $100.00 of freight revenue on the entire Division, the presumption is that that was the cost on every part of the Division, and there is absolutely nothing in the record to rebut this presumption.

It is manifest then that the method adopted by the Master of using percentages of expenses to earnings to ascertain the cost of handling the freight traffic covered by the order of the Commission produced correct results, to say nothing of the fact that it was the identical method approved and adopted by this court in *Smyth v. Ames, supra*, for ascertaining the cost of handling the freight traffic involved in that case.

In the original and supplemental briefs for appellants an attempt is made to show that this method of ascertaining the cost was wrong by first attempting to reduce the traffic involved in this case to a ton mileage basis, and then comparing the earnings per ton per mile and the cost per ton per mile with like earnings and cost appearing in exhibit No. 6 on page 203 of the record. This exhibit purports to give the freight statistics of appellee for the year 1905. The miles of road operated are given as 658.31 miles, whereas the road covered by the order of the Commission was only 80 miles. The statistics are for all the miles of road operated and the average earnings per ton per mile and the average cost per ton per mile are for all the freight of all kinds handled on the entire 658.31 miles of road operated. In reducing to a ton mileage basis the freight traffic involved in this case on the 80 miles of road between Indianapolis, Indiana, and the Illinois line, the length of haul used in the computation found in the briefs for appellants is pure assumption, and does not rise above the dignity of a guess. Waiving, however, any criticism of the ton mileage thus obtained, it is manifest that it is in-

appropriate and entirely useless to try to determine the actual cost of handling freight by reducing the traffic to the ton mileage basis.

In arriving at the cost per ton per mile in that way it is assumed that the hauling of five tons a distance of ten miles is equivalent to hauling one ton 50 miles. All the various kinds and quantities of freight hauled many different distances are arbitrarily reduced in this way to the ton mileage basis. The number of tons is thereby enormously increased and all hauls are reduced to one mile. The total freight revenue is then divided by this imaginary number of tons and the result is said to be the average earnings per ton per mile. The total freight expenses are also divided by this imaginary number of tons, and the result is said to be the average cost per ton per mile. The figures appearing in exhibit No. 6 illustrate the utter absurdity of taking these earnings per ton per mile as showing the actual earnings on any of the traffic or of taking the cost per ton per mile as showing the actual cost of handling any of it. The total number of tons carried is stated to be something over 7,000,000 tons, whereas the number of tons carried one mile is nearly 632,000,000 tons—about ninety times as great. The average earning per ton when only the actual tons are used in the computation is shown to be in round numbers 65 cents, whereas the average earning per ton per mile is but little more than seven miles or about ninety times less. In ascertaining the average earnings per actual ton a great number of different rates enter into the computation, and no attention is paid to the lengths of the hauls. The average then is necessarily far below the highest earnings, and far above the lowest. It can not therefore be regarded as establishing the actual earnings per ton for any kind of freight for any distance. In

like manner if all the freight expenses be divided by the actual number of tons carried regardless of distance, it will give an average cost per ton which is much below the cost of handling a part of the traffic and above the cost of handling another part of the traffic for any distance. This average cannot therefore be taken to represent the actual cost of handling any part of the traffic. It is infinitely nearer correct, however, than the cost per ton per mile.

Statements of revenue per ton per mile or of cost per ton per mile are absolutely useless for any purpose except for comparison with like statements. It is wholly useless to compare imaginary with actual results, and absurd to make them the basis for ascertaining actual freight earnings or of ascertaining the actual cost of handling freight traffic.

A brief notice of some of the many elaborate computations found in the briefs for appellants will show how true this is.

Take the year 1905, for instance: Exhibit No. 6 on page 203 of the record gives the miles of road operated that year as 658.31; the freight earnings $4,675,741.62, the freight expenses per mile of road $6,290.93. By multiplying the freight expenses per mile of road by the miles of road operated we get $4,141,382.13 as the total freight expenses that year, and the percentage of freight expenses to freight earnings was therefore 88.6 per cent. This same exhibit gives 74-100 of a cent as the average earnings per ton per mile, and 59-100 of a cent as the average cost per ton per mile. On this basis the percentage of expenses to earnings is 79.7 per cent, which is 8.9 per cent below the real percentage obtained by dividing the real freight expenses by the real freight earnings. The use of the imaginary percentage of 79.7 has the effect of making the freight expenses less than the real expenses by about $415,000.00.

This imaginary percentage of 79.7 per cent. is frequently used by counsel for appellants instead of the real percentage, and it is manifest that any results which are obtained based on its use are wholly incorrect. This is admirably illustrated by comparing the imaginary percentage of 26.27 stated by counsel for appellants to be the correct percentage of expenses to earnings under appellee's schedule of rates from the classified freight covered by the order of the Commission. This imaginary percentage is obtained by using as a basis the imaginary percentage of expenses per ton per mile to earnings per ton per mile above mentioned. If it be correct, then it cost in round numbers 26 cents to earn every dollar of revenue derived from the classified freight covered by the order of the Commission. Under appellee's schedule of rates, the first-class rate from Indianapolis to Ben Davis, a distance of six miles, was 10 cents per hundred pounds, or $2.00 per ton. This is at the rate of 33 1-3 cents per ton for a haul of one mile and would cover all terminal expenses as well as the expenses of the haul. It would be necesary for appellee to handle three tons of this freight one mile to earn a dollar, and counsel for appellants says that it would cost in round numbers 26 cents to earn that dollar; that is to say, it would cost no more than 26 cents to load, haul one mile, and deliver three tons of first-class freight. In the supplemental brief, on page 75, following elaborate calculations and arguments it is said that the appellants for whom that brief is submitted "feel very safe in asserting that the total cost of handling freight across the platform cannot be placed above 40 cents per ton or 2 cents per hundred weight, and they adopt this figure for their future investigation." If it would cost 40 cents to handle one ton of freight across the platform, it would, of course, cost $1.20 to handle three tons

of freight across the platform, and yet it is insisted that it would only cost appellee 26 cents to load, haul one mile, and deliver three tons of freight.

It has been shown that the total freight expense in 1905 was $4,141,382.13. Exhibit No. 6 gives the number of tons that year 7,174,257. Dividing the total expenses by the number of tons carried, we get in round numbers 57 cents as the average cost per ton, which is more than 96 times the average cost of 59-100 of a cent per ton per mile.

Beginning on page 60 of the original brief, the proposition is submitted that the expense of handling that part of the classified freight which was not carried in carload lots was no more than 17.41 per cent of the earnings therefrom under the Railroad Company's schedule of rates. The proposition is not worthy of serious notice, when it is remembered that in the same brief, beginning on page 57 it is claimed that the expense of handling all the classified freight covered by the order of the Commission, carloads and less than carloads, was no more than 26.27 per cent. The evidence makes it plain beyond possibility of question that it costs a railroad company a great deal more to handle freight which it loads and unloads across the platform of a freight house than freight which is not loaded or unloaded through the freight house but is loaded and unloaded by the owner of the freight at his expense; and it is equally clear under the evidence that the relative cost is a great deal higher when light loads are hauled in the cars than when the cars are well loaded.

All these startling discrepancies are mainly due to the fact that calculations which give the percentage of 26.27 as the result are based upon the imaginary cost per ton per mile of 59-100 of one cent, shown in Exhibit No. 6.

Table *N* appearing on page 82 of the supplemental brief

for a part of the appellants, requires special notice. It purports to make a comparison betwen the operations of the appellee for the year 1905 with the operations of each of the companies involved in *Smyth v. Ames* for the year 1892. This table is so full of errors as to make it worthless for any purpose so far as appellee is concerned. It pretends to give the tons carried other than local freight that year, and arrives at the amount by deducting the tons of classified freight carried that year between Indianapolis and the Illinois state line over 80 miles of road from the total tons carried that year local and through, classified and otherwise, over 658.31 miles of road. It pretends to give the amount received for other than local freight, and arrives at the amount given by deducting the earnings received that year from the local classified freight handled on the 80 miles of road between Indianapolis and the Illinois state line from the total freight earnings received from all classes of freight, local and through, classified and otherwise, carried that year on 658.31 miles of road. It pretends to give the number of tons of local freight carried one mile and the number of tons of interstate freight carried one mile. In the first case the figures 32.85 are based upon a pure guess of the average number of miles of haul of the local classified freight on 80 miles road without anything in the record to establish the correctness of the guess, and in the second case the figures are approximately the difference betwen the whole number of tons carried one mile over 658.31 miles and the number of tons it is guessed was carried one mile on the 80 miles of road between Indianapolis and the Illinois line. It gives 88.3 miles as the average number of miles one ton of through freight was carried, and the statement is made on page 84 of the brief that this is taken from exhibit 6. That exhibit gives the average

miles each ton was carried as 88.04, but that applies to all freight of every description, local and through, classified and otherwise, that was handled on 658.31 miles of road. It pretends to give the average amount received for carrying one ton of through freight as 64.2 cents, and it is stated on page 84 of the brief that that amount is taken from exhibit 6. As a matter of fact that exhibit gives 65.2 cents as the average gross earnings per ton on 7,174,257 tons of all kinds of freight, local and through, handled on 658.31 miles of road. The results given in the last four columns of the statement are equally erroneous as has been fully explained in other parts of this brief.

It is true this table *N* shows that in 1892 the Burlington Company received the same average amount per ton for carrying local as it did for carrying through freight, but at the same time it also shows that the St. Paul Company received 55 cents per ton more for local than for through freight, and the Fremont Company 76 cents more. It is manifest then that the equality of average earnings per ton from local and through freight was not considered essential by this court in deciding *Smyth v. Ames*.

In this same table *N* the average amount received by appellee for carrying one ton of local freight is given as $2.34, and that amount is compared with 64.2 cents given as the average amount received for carrying one ton of through freight. It has been shown that this last amount should be given as 65.2 cents. The error is doubtless typographical and wholly immaterial. This disparity is much greater than that for the St. Paul Company or for the Fremont Company just mentioned, but it is easily explained and readily understood. The comparison made in the table of the average receipts per ton by each of the companies involved in *Smyth v. Ames* is a comparison of the average

amount received for each ton of all kinds of local freight hauled in Nebraska with the average amount received for each ton of all kinds of freight hauled in Nebraska, including through and local; but the comparison made for appellee is a comparison of the average amount received per ton from local classified freight alone that moved over only 80 miles of road and had its origin and destination thereon, with the average amount received per ton from all kinds of freight, local and through, classified and otherwise, which was carried over 658.31 miles of road. It is evident then that with respect to the companies concerned in *Smyth v. Ames* like was compared with like, but with respect to appellee the comparison was between things entirely different. If a similar comparison was to be made for appellee it should have been one between the average amount received per ton from local classified freight carried over 80 miles of road and the average amount received per ton from all freight, local and through, classified and otherwise carried on the same 80 miles of road. No reason can be imagined for making even a comparison of that kind, but it is possible it might serve some purpose, while the comparison actually made is misleading and absolutely worthless for any purpose.

The fact that the average amount received per ton in 1905 from local classified freight carried over the 80 miles of road between Indianapolis and the Illinois line and having its origin and destination on that road is more than $2.00, while the average amount received per ton from all kinds of freight, local and through, classified and otherwise, carried that year over 658.31 miles of road was 65 cents does not indicate, nor even tend to suggest that the rates on the local classified freight were too high, or that the relation between them and any of the other freight

rates was in the least abnormal. Local classified freight yields the highest revenue, while commodities like coal and grain yield in the neighborhood of the lowest revenue per ton. The cost, however, of handling this local classified freight is very much greater than the cost of handling any other kind of freight, and the general average percentages of all expenses to all earnings on the 80 miles of road used in this case represents with sufficient accuracy the cost of handling the local classified freight on those 80 miles. The evidence of Mr. Downing and of Mr. Saur was not introduced for the purpose of establishing how much this cost of handling the total classified freight exceeded the cost of handling through freight, but simply to show that the cost was necessarily much greater. With this fact established, it is plain that if it cost 73 cents to earn $1.00 from all kinds of freight, the cost of earning $1.00 from the classified freight involved in this case was much greater. Exactly how much, it is impossible to say, but manifestly it was enough greater to fully warrant the presumption that a reduction of 34 per cent. in revenue would cause an operating loss. If, indeed, the percentage instead of being greater than 73 was 67, or 6 per cent. less, still a reduction of 34 per cent. in revenue would cause an operating loss.

IV.

The decree as rendered is right in every respect, and should be in all things affirmed.

The revenue that was derived during each of the years 1904, 1905 and 1906 from the local classified freight covered by the Commission's order, and also the revenue that would have been derived from that same freight during each of those years had the Commission rates been in force,

was precisely established by undisputed evidence. The percentage of expenses to earnings for each of those years on the 80 miles of railroad affected by the order of the Commision was established in like manner; and by applying the percentage for any year to the revenue for that year, the cost of earning that revenue was obtained. Upon comparing the cost thus obtained for any year with the revenue which would have been earned that year had the Commission rates been in force, it was shown with mathematical certainty that the cost exceeded the revenue. There is not and cannot be any question raised as to the correctness of the amounts thus established and reported by the Master; and as in each year the cost exceeded the revenue, the conclusion was irresistible that the enforcement of the Commission's order would deprive appellee of its property without due process of law. Necessarily then, the Commission's order was void, and the relief to which appellee was entitled, indeed, the only effective relief that could be given, was the injunction against the enforcement of any penalties or claims for damages on account of any violation of the order. If the order was void when made, no subsequent change in conditions could have the effect of making it valid. The Commision could take care of new conditions only by a new order, and that it is at full liberty to do at any time.

The method adopted for determining the effect of the Commission's order was identical with that approved and adopted by this court in *Smyth v. Ames, supra.* The table appearing on page 538 of the decision in that case shows this to be so, with the exception that 10 per cent was allowed as the extra cost of handling local business in that case, and in the case at bar the general percentage of ex-

penses to earnings was used without any allowance whatever for the extra cost of handling local business.

The evidence made it plain that the use of the percentage of expenses to earnings to ascertain the cost was the best, if not the only, method available, and the Master so found and reported.

(Record pp. 15 and 16.)

The rates which the Commission ordered to be reduced were normal rates, established under competition and which had been in force for a number of years. They were somewhat higher than the scale of minimum class rates of the Central Freight Association (exhibit 4, record p. 199), and there was no reason why they should not be. The scale adopted by the Commission, however, (Rec. p. 10) while in some instances it was slightly higher than that scale on the shorter hauls where not much revenue would be earned, on the longer hauls it was somewhat lower. The earnings under those normal competitive rates would have been reduced 34.5 per cent. in each of the years 1904 and 1906, and 34 per cent. in 1905 had the Commission rates been in force. The minimum percentage of expenses to earnings in any of those years was 72.64 per cent. These facts standing alone would have made a *prima facie* case for appellee, and put upon the Commission the burden of justifying its extraordinary action. The great importance to be attached to similar facts was fully recognized by this court in *Smyth v. Ames*, when on page 542, in quoting from the opinion rendered by the late Mr. Justice Brewer when the case was decided by him in the Circuit Court, it is said:

"The tariff which was in force at the time of the passage of this act had been, for some three or more years, fixed by the voluntary action of the railroad companies, and the reduction of 29½ per cent. was from their rates. It must be remembered that these roads are competing roads; that com-

petition tends to a reduction of rates—sometimes, as the history of the country has shown, below that which affords any remuneration to those who own the property. Can it be possible that any business so carried on can suffer a reduction of 29½ per cent. in its receipts without ruin? What would any business man, engaged in any business of a private character, think of a compulsory reduction of his receipts to the amount of 29½ per cent?"

The proposition that in cases like *Smyth v. Ames* and the case at bar it is eminently proper, if not absolutely necessary, to use percentages of expenses to earnings to ascertain cost is too nearly self-evident to require discussion, and that the use of them in the case at bar produced correct results has already been shown. There remain only a few things in the briefs for appellants which seem to require any notice. As to most of them, discussion is foreclosed by the decision in *Smyth v. Ames*.

It is said that appellee's rates on the 80 miles of road between Indianapolis and the Illinois line were higher than the rates on some other roads running out of Indianapolis to the east and south. In *Smyth v. Ames* it was said that the rates in Nebraska were higher than on the same roads in Iowa, but that fact was not considered of any importance by this court. By the same token the differences in rates to which counsel for appellants call attention cut no figure in the case at bar. At most, the differences are insignificant, and no more than might be expected.

It is said that the traffic affected by the Commission's order constituted but a small part of appellee's freight traffic. It cannot be ascertained from the evidence for any one of the three years what the total tonnage of all kinds of freight was on the 80 miles of railroad extending from Indianapolis to the Illinois line. It is not, therefore, possible to say whether the classified tonnage on that 80 miles

of road formed a large or a small part of the total tonnage on that eighty miles. Conceding, however, for the sake of argument that it formed only a small part, it is impossible to conceive why if it cost 73 cents to earn a dollar, that cost is correct and true when applied to all the freight, but not true as to a part only, and that part the most expensive of all to handle.

In *Smyth v. Ames* (page 542), it was shown that the percentage of reduction on the total amount of business done in the State of Nebraska by each of the companies concerned was small, running from 1.5 to 4.5 per cent. It was held that these small reductions only indicated how small a proportion of the total amount of business done in the state came from purely local freight, and on page 543, still quoting from the decision of Mr. Justice Brewer in the Circuit Court, it is said:

"The fact that the State of Nebraska can reach only one twentieth of the total earnings, gives it no greater right to make a reduction in respect to that one twentieth than it would have, had it the power over the total earnings, and attempted in them a like per cent. of reduction. If it would be unreasonable to reduce the total earnings of these roads 29½ per cent. it is at least *prima facie* equally unreasonable to so reduce any single fractional part of such earnings."

An attempt is made to distinguish *Smyth v. Ames* from the case at bar, but inasmuch as the attempt is based wholly on table *N* in the supplemental brief, which has already been discussed, it is a complete failure. It seems to be impossible for appellants to get away from the ton mileage theory, although no attention was paid to either revenue or expenses per ton per mile in *Smyth v. Ames*, and before making any headway at all in finding differences between *Smyth v. Ames* and the case at bar it was necessary to reduce that case and the case at bar to the ton mileage theory. Even if the reduction process as to appellee

had been correct, the results would furnish no aid whatever in determining the cost of handling the local classified traffic involved in the case at bar.

There are, however, some differences between *Smyth v. Ames* and the case at bar, among which the following may be enumerated:

(a) The reduction in revenue was 29½ per cent. in *Smyth v. Ames,* and here it is 34½ per cent;

(b) An operating loss could not be shown in *Smyth v. Ames* except by allowing 10 per cent. for the additional cost of handling local freight, and here nothing was claimed or allowed for such additional cost;

(c) Freight expenses are not separately shown in that case, only the percentage of all expenses to all earnings in Nebraska being given, whereas here not only the percentage of expenses to earnings for 1904 is given, but as to each of the other two years statements were put in evidence from which freight earnings and freight expenses and the exact percentage of freight expenses to freight earnings could be ascertained.

In every essential respect the case at bar is identical with *Smyth v. Ames,* and upon authority of that case it is respectfully submitted that the decree below must be in all things affirmed. The suggestion that if this be done the Commission will be powerless to enforce the reduction of exorbitant rates is not worthy of serious consideration. There was no attempt made by the Commission in the case at bar to reduce exorbitant rates. The attack was made on normal rates, established under competition, and it is worthy of remark that 80 miles of road out of 658.31 miles was selected, and only the local classified rates on that small part of the total mileage attacked. The appellants in whose behalf the supplemental brief is filed were alone

responsible for this, and the manner in which the case is presented in their behalf in this court strongly suggests that they are extremely desirous of establishing a principle which, when a piece-meal attack is made on rates, the railroad companies being unable to show the cost of handling the small proportion of business involved, will be compelled to conform to any order the Commission may make. This would place unbridled power in the hands of the Commission; for by a series of piece-meal attacks all the rate schedules of a railroad company could finally be destroyed, regardless of the 14th amendment, or anythoing else that stood in the way of a frenzy for confiscation of railroad property.

Respectfully submitted,

JNO. G. WILLIAMS,
Attorney for Appellee.

F. D. McKENNEY,
D. P. WILLIAMS,
S. O. PICKENS,
Of Counsel.